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SUPREME COURT OF THE UNITED STATES.

No. ~~176~~ 98. ~~46. 25 24~~ 23 22

WILLIAM CHRISTY, PLAINTIFF IN ERROR,

vs.

H. M D. PRIDGEON, ADMINISTRATOR OF WILEY W. PRIDGEON, DECEASED.

IN ERROR TO THE DISTRICT COURT UNITED STATES FOR THE EASTERN DISTRICT OF TEXAS.

G. S. GIDEON, Printer, 511 Ninth street, Washington, D. C.

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THE UNITED STATES OF AMERICA.

District Court of the United States, Eastern district of Texas—at Galveston.

At a term of the district court of the United States of America, for the then district of Texas, now eastern district of Texas, begun and held at the city of Galveston, on the first Monday of the month of January, in the year of our Lord one thousand eight hundred and fifty-seven.

Present, the Hon. John C. Watrous, judge of said court; Ben. McCulloch, esq., United States marshal; Samuel D. Hay, esq., United States district attorney, and James Love, esq., clerk.

Among other were the following proceedings, to wit:

WILLIAM CHRISTY, Plaintiff,
vs.
R. S. PRIDGEON, Adm'r of the estate of Wiley W. Pridgeon, dec'd. } Law No. 186.

Be it remembered, that heretofore, to wit, on the 10th day of July, in the year of our Lord one thousand eight hundred and forty nine, came William Christy, by Robert Hughes, his attorney, and filed his petition herein in the words and figures following, to wit:

Petition.

District Court—December Term, 1849.

UNITED STATES OF AMERICA,
District of Texas.

To the Hon. John C. Watrous, Judge of the said District:

The petition of William Christy, a citizen and resident of the city of New Orleans, and State of Louisiana, plaintiff, against Wiley W. Pridgeon, a citizen and resident of the county of Harrisson, and State of Texas, defendant. And thereupon your petitioner, humbly complaining, respectfully represents unto your honor, that heretofore, to wit, on the first day of June, A. D. 1849, at, to wit, in the district aforesaid, he was seized in his demesne as of fee, in and to a certain tract or parcel of land, situated, lying, and being in the county of Harrisson aforesaid, in the district aforesaid, between the Sabine and Red rivers, and south of Soda lake, and butted and bounded as follows, to wit: Beginning at a corner post, from which a hickory eighteen inches in diameter bears south twenty-eight degrees west, two and three-fifths varas distant, and a pin-oak twenty inches in diameter bears north

twenty degrees west, three varas distant; thence north five thousand varas, intersecting at the distance of fourteen hundred varas, a ravine running east, and at three thousand two hundred varas a creek also running east to the second corner, from which a hickory fifteen inches in diameter bears north seventy degrees west, eleven varas distant, and an oak fifteen inches in diameter bears south fourteen degrees east, four and a fifth varas distant; thence west fifteen thousand varas, intersecting at the distance of twenty-four hundred varas, a creek running southeast, and at five thousand varas a ravine running northeast, and at six thousand varas a ravine also running northeast, and at twelve thousand two hundred varas a creek also running northeast to the third corner post, from which a black-jack fifteen inches in diameter bears north four degrees east, five and two-fifths varas distant; thence south five thousand varas, intersecting at the distance of one hundred varas a ravine running east, and at three thousand four hundred varas a ravine also running east to the forth corner post, from which a black-jack twelve inches in diameter bears north twenty-three degrees west, three hundred and two-fifths varas distant, and another black-jack fourteen inches in diameter bears south seventy-eight degrees east, five and two-fifths varas distant; thence east to the first corner post fifteen thousand varas, intersecting at the distance of six thousand seven hundred varas a ravine running southeast, at eleven thousand four hundred varas another ravine also running southeast, containing three leagues or seventy-five millions square varas of land, be the same more or less, with the hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and being so seized, and then and there possessed of the same, the said Wiley W. Pridgeon then and there afterwards, to wit, on the day and year aforesaid, at the district aforesaid, with force and arms entered in and upon the said land, situated, butted, and bounded as aforesaid, with the hereditaments and appurtenances thereunto belonging, and then and there ejected, expelled, put out, and removed your petitioner from said land and tenements, with the hereditaments and appurtenances thereunto belonging, so situated, butted, and bounded as aforesaid, and from the possession, use, occupation, and enjoyment of the same, and kept and continued him so ejected, expelled, put out, and amoved for a long space of time, to wit, from thence hitherto, and other wrongs then and there did, to the great damage of your petitioner; wherefore he says he is injured and has sustained damage to the value of twenty thousand dollars.

And your petitioner would further represent unto your honor, and complain, that also, heretofore, to wit, on said first day of June, A. D. 1849, at the district aforesaid, he was seized in his demesne, as of fee, of, in, and to another tract or parcel of land, situate, lying, and being in said county of Harrisson, also between the Sa-

bine and Red rivers, and south of the Soda lake aforesaid, which is butted and bounded as follows, to wit: Beginning at a corner post, from which a red oak eighteen inches in diameter bears north forty-four degrees west, nine and three-fifths varas distant, and a hickory ten inches in diameter bears south eighty-four degrees east, six and three-fifths varas distant; thence north five thousand varas, intersecting at the distance of four hundred varas a creek ten varas wide running east, and at twelve hundred varas another creek fifteen varas wide running east, and at four thousand five hundred varas another creek ten varas wide running east to the second corner, a post, from which a red oak eighteen inches in diameter bears south seventy-six degrees west, nine and one-fifth varas distant, and a white oak twelve inches in diameter bears north seventy-six degrees east, fourteen varas distant; thence west five thousand varas to the third corner, a post, from which a hickory eighteen inches in diameter bears north twenty degrees west, three varas distant; thence south five thousand varas, intersecting at one thousand varas a creek ten varas wide running east, and at fourteen hundred varas another creek ten varas wide, also running east; at twenty-six hundred varas another creek ten varas wide, also running east; and at four thousand three hundred varas a ravine running east to the fourth corner, a post, from which a hickory fifteen inches in diameter bears north fifteen degrees east, three varas distant, and another hickory fifteen inches in diameter bears south eighty-six degrees east, sixteen varas distant; thence south five thousand varas to the first corner, intersecting at the distance of three thousand varas a creek ten varas wide, running northeast, containing one league or twenty-five million square varas of land, be the same more or less, with the hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and being so thereof seized, and then and there possessed of the same, the said Wiley W. Pridgeon then and there afterwards, to wit, on the day and year last aforesaid, at the district aforesaid, with force and arms, entered in and upon the said land, situated, butted, and bounded as aforesaid, with the hereditaments and appurtenances thereunto belonging, and then and there ejected, expelled, put out, and amoved your petitioner from the said lands and tenements, with the hereditaments and appurtenances thereunto belonging, so situated, butted, and bounded as aforesaid, and from the possession, use, occupation, and enjoyment of the same, and kept and continued him so ejected, expelled, put out, and amoved for a long space of time, to wit, from thence hitherto, and other wrongs then and there did, to the great damage of your petitioner; wherefore he says he is injured and hath sustained damage to the value of twenty thousand dollars.

And your petitioner would further represent unto your honor, and complain, that heretofore, to wit, on the said first day of June,

A. D. 1849, at, to wit, in the district aforesaid, he was seized in his demesne as of fee, of, in, and to another tract or parcel of land situate, lying, and being in the said county of Harrisson, in the district aforesaid, between the Sabine and Red rivers, south of Soda lake, and butted and bounded as follows, to wit: Beginning at a post, from which a red oak eighteen inches in diameter bears south seventy-six degrees west, four and one-fifth varas distant, and a white oak twelve inches in diameter bears north seventy-six degrees east, fourteen varas distant; thence north five thousand varas, intersecting at the distance of one hundred varas a ravine running east; and at nineteen hundred varas a stream ten varas wide, also running east; and at the distance of twenty-six hundred varas a ravine running southeast to the second corner, a post, from which a black-jack sixteen inches in diameter bears south eighty-eight degrees west, four and four-fifths varas distant, and a hickory fourteen inches in diameter bears north forty-three degrees east, six varas distant; thence west five thousand varas to a post, the third corner, from which an oak fifteen inches in diameter bears south fourteen degrees east, four and one-fifth varas distant, and a hickory fifteen inches in diameter bears north seventy degrees west, eleven varas distant; thence south five thousand varas, intersecting at twenty-one hundred varas a ravine running east to a post, the south and last corner, from which a hickory eighteen inches in diameter bears south twenty-eight degrees west, two and three-fifths varas distant, and a red oak twenty-inches in diameter bears north twenty degrees west, three varas distant; thence east five thousand varas to the first corner, containing one league or twenty-five million square varas of land, be the same more or less, with the hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and being so thereof seized, and then and there possessed of the same, the said Wiley W. Pridgeon then and there afterwards, to wit, on the day and year aforesaid, at the district aforesaid, with force and arms, entered in and upon the said lands, situated, butted, and bounded as aforesaid, with the hereditaments and appurtenances thereunto belonging, and then and there ejected, expelled, put out, and amoved your petitioner from said lands and tenements, with the hereditaments and appurtenances so situated as aforesaid, and from the possession, use, occupation, and enjoyment of the same, and kept and continued him so ejected, expelled, put out, and amoved for a long space of time, to wit, from thence hitherto, and other wrongs then and there did, to the great damage of your petitioner; wherefore he says he is injured and hath sustained damage to the value of twenty thousand dollars.

The premises considered, your petitioner prays that process of citation may issue to the marshal of the district aforesaid, commanding, &c., that the said Wiley W. Pridgeon be made defendant hereto, may appear and answer this petition, and that after

due trial had by and before your honor according to the rules of law, your petitioner may have judgment for such damages as he has sustained by reason of the premises, and for the recovery of the lands aforesaid, with the hereditaments and appurtenances aforesaid, for his costs about his suit in this behalf expended, with writ of possession upon the recovery of said lands, &c., or that he may obtain such relief as he is entitled to. And your petitioner, as in duty bound, will ever pray, &c.

ROB. HUGHES, *p. q.*

And afterwards, to wit, on the tenth day of July, A. D. 1849, the following citation was issued:

United States District Court, district of Texas.

The President of the United States of America to the Marshal, or any of his lawful deputies, of the district of Texas, greeting:

You are hereby commanded to summon Wiley W. Pridgeon, if he be found in your district, to be and appear before the honorable district court of the United States, at a court to be holden in and for the district of Texas, at the city of Galveston, on the first Monday of December next, to answer the petition and complaint of William Christy, in an action amounting to twenty thousand dollars, of which you will serve the defendant with the accompanying copy of said petition.

Witness the Honorable John C. Watrous, judge of said court, and seal of court, at the city of Galveston, this tenth day [L. S.] of July, A. D. 1849, and 74th year of the independence of the United States.

JAMES LOVE, *Clerk*.

Upon which said writ of citation the marshal made the following return:

Received 12th July, A. D. 1849. Not found.

J. BATES,
U. S. Marshal, District of Texas.
By J. W. JOHNSON, *Deputy*.

And afterwards, to wit, on the 19th day of October, A. D. 1849, the following writ of citation was issued against the defendant, Wiley W. Pridgeon:

United States District Court, district of Texas.

The President of the United States of America to the Marshal, or any of his lawful deputies, of the district of Texas, greeting:

You are hereby commanded to summon Wiley W. Pridgeon, if he be found in your district, to be and appear before the honorable district court of the United States, at a court to be holden in and for the district of Texas, at the city of Galveston, the first Monday

of December next, to answer the petition and complaint of William Christy, in an action amounting to the sum of twenty thousand dollars, of which you will serve the defendant with the accompanying copy of said petition.

Witness the Honorable John C. Watrous, judge of said court, the seal of court, at the city of Galveston, this 19th day [L. S.] of October, A. D. 1849, and seventy-fourth year of the independence of the United States.

JAMES LOVE, *Clerk.*

Upon which said writ of citation the marshal made the following return:

Received 19th October, 1849. Not found. Not executed, the defendant not being found in my district.

J. BATES,
U. States Marshal.
By JAMES KERR, *Deputy.*

And afterwards, to wit, on the 24th day of January, A. D. 1850, it being a day of December term, 1849, the following order was entered on the minutes of the court:

WILLIAM CHRISTY
vs.
WILEY W. PRIDGEON.

By consent of the parties, this cause is continued, and leave is given the defendant until the first day of February next to file his answer; and it is further agreed by the parties, that the surveyor of Harrisson county shall go upon the land in controversy upon a day to be designated by him, whereof twenty days' notice is to be given to the parties herein, and survey and lay out the same as either party shall require, and return a fair plat and report thereof to the next term of this court.

And afterwards, to wit, on the 24th day of February, 1850, it being a day of said December term, the following order was entered in said cause:

WILLIAM CHRISTY
vs.
WILEY W. PRIDGEON.

On motion, Edward Clark, of Harrisson county, is appointed a special commissioner to take the depositions of witnesses to be read in evidence on the trial of this cause.

And afterwards, to wit, on the 19th day of September, A. D. 1850, the following alias citation was issued in the aforesaid cause against the defendant, Wiley W. Pridgeon:

United States District Court, district of Texas.

The President of the United States of America to the Marshal, or any of his lawful deputies, of the district of Texas, greeting:

You are hereby commanded to summon, as you have before been, Wiley W. Pridgeon, if he be found in your district, to be and appear before the honorable the district court of the United States, at a court to be holden in and for the district of Texas, at the city of Galveston, on the first Monday of December next, to answer the petition and complaint of William Christy against Wiley W. Pridgeon in action of trespass to try title, and for twenty thousand dollars damages, of which you will serve the said defendant, Wiley W. Pridgeon, with the accompanying copy of said petition.

Witness the Honorable John C. Watrous, judge of said court, and the seal of said court, at the city of Galveston, this
[L. S.] 19th day of September, A. D. 1850, and the seventy-fifth year of the independence of the United States of America.

JAMES LOVE, *Clerk.*

Upon which said writ of citation the marshal made the following return:

Received 19th September, 1850, and executed by serving the petition and copy of this summons upon defendant on the 7th day of October, A. D. 1850.

J. BATES,
U. S. Marshal District of Texas.
By J. W. JOHNSON,
Dep'y Mar.

And afterwards, to wit, on the 27th day of January, 1857, a day of the December term, 1850, the following order was entered on the minutes of the court:

WILLIAM CHRISTY
vs.
WILEY W. PRIDGEON.

On motion of attorney for defendant, it is ordered that the defendant in this cause have leave to plead, and he accordingly filed his answer pleas.

And afterwards, to wit, on the 11th day of February, 1851, it being a day of December term, 1850, the defendant his answer to the petition of plaintiff, in words and figures as follows, to wit:

UNITED STATES OF AMERICA,
District of Texas.

District Court, December Term, 1850.

WILLIAM CHRISTY
vs.
WILEY W. PRIDGEON.

And now comes the said defendant, by his attorney, and answering the petition of said plaintiff, says that he denies all and singular the allegations in the said petition, and prays that the plaintiff be held to the strict proof of the same.

2. And as to the trespasses and ejectments, or either of them, complained of by plaintiff in his petition, the defendant says he is not guilty, and puts himself on the country, &c.

3. And the defendant further answers and says, that as to the land described in the petition of the plaintiff, the same is part of an eleven league claim, which was located within the twenty frontier leagues bordering on the boundary line between Texas and the United States of North America, previous to the 17th day of March, A. D. 1836, to wit, in September, 1835, and was located without the approbation or assent of the national Executive of Mexico.

4. And for further plea, said defendant, by his attorney, says, that as to the pretended grant, under and by virtue of which plaintiff claims the land described in his petition, the same is an eleven league claim, or grant, and was issued on, to wit, the 22d day of September, A. D. 1835, by one Radford Berry, as the pretended constitutional alcalde of Nacogdoches, under pretence of authority vested in him by the decree of the governor of the State of Coahuila and Texas, dated the fifth day of April, A. D. 1831, and was issued without the approbation or assent of the supreme national Executive of Mexico.

5. And the said defendant further says, that if any such grant or title was made, as by said plaintiff is pretended, the same was made on, to wit, the 22d day of September, A. D. 1835, by one Radford Berry, as alcalde of Nacogdoches; and the said Radford Berry then, to wit, at the date of said grant, had no power or authority to make said grant.

6. And the said defendant further says, that the plaintiff claims the land sued for, under and through a pretended grant from the government of the State of Coahuila and Texas, made to Miguel Arciniega, as a Mexican and purchaser, and purporting to have been procured for the said Arciniega by one William G. Logan, as his agent; and the defendant says, that the said pretended grant or title of the plaintiff to the land sued for is not valid in law, because the same was procured by fraud, in this, that the said Miguel Arcienaga, to whom the said grant purports to have been made, and the said William G. Logan, combined and confederated together, for the purpose of evading the law then in force, allowing the sale of lands to Mexicans, and to them only, and falsely and fraudulently represented to Radford Berry, by whom said grant purports to have been issued, that the application by said Arcienaga for the grant of said land was really and bona fide made for him by said Logan, and that the said Arcienaga was to be the real

purchaser of said land, and to hold and possess the same as a Mexican citizen, while in truth the said Arcienaga fraudulently permitted the said Logan to use his name, and in his name procured the said grant solely for the use and benefit of him, the said Logan, who was not at the time of procuring said grant a Mexican citizen, and who, by the false and fraudulent practices aforesaid, procured the said grant, and appropriated the land granted to his (the said Logan's) own use and benefit.

(7). And the said defendant says, that the plaintiff claims the land described in his petition by a pretended grant, purporting to have been made by the authority of the government of the State of Coahuila and Texas to one Miguel Arcienaga, bearing date, to wit, the 22d day of September, A. D. 1835, and that the said pretended grant was made upon the conditions, that the said Arcienaga, or the person or persons to whom he might alienate the lands described in said grant, would settle and cultivate the same within six years from the acquisition thereof, by said pretended grant, and pay for said land the price established by law; and the defendant says, that the said Arcienaga, and those claiming said land under him, wholly failed to comply with said conditions.

(8). And for further plea the said defendant, by his attorney, says, that the said plaintiff claims the land described in his petition under and through a pretended grant purporting to have been made on, to wit, the 22d day of September, A. D. 1835, by one Radford Berry, as the alcalde of Nacogdoches, under pretended authority from the governor of the State of Coahuila and Texas, bearing date the 5th day of April, A. D. 1831, to one Miguel Arcienaga, and under and through a pretended claim of transfers from the said Miguel Arcienega to said plaintiff, made and dated before the time when the constitution of the republic of Texas took effect—that is to say, under and through a pretended transfer, bearing date the 23d day of March, A. D. 1836, purporting to have been made by one William G. Logan, acting in his own name, as well as in his capacity of agent and attorney in fact of Miguel Arcienaga, to Andrew Hodge, junior, in the city of New Orleans, and State of Louisiana, and under and through a pretended transfer, bearing date on the sixth day of August, A. D. 1836, purporting to have been made in the city of New Orleans, and State of Louisiana, by Andrew Hodge, junior, to the plaintiff, and that at the date of said transfer, to wit, the sixth day of August, A. D. 1836, the said plaintiff was not, and previous thereto had never been, a citizen, resident or naturalized, of Texas, of Cohuila and Texas, or of Mexico, but was then, to wit, on the day and year last aforesaid, and thence hitherto has continued to be a resident and citizen of the United States of North America, owing and paying allegiance to the government thereof.

(9). Said defendant further says, that the land claimed by plain-

tiff in his petition is located within the territory designated as the twenty frontier leagues, bordering on the United States of the North, in the act of Congress of the republic of Texas, approved January the 9th, A. *A.* 1841, entitled An act to quiet the land titles within the twenty frontier leagues bordering on the United States of the North, and is claimed by plaintiff by virtue of said location made prior to the seventeenth day of March, A. D. 1836, and that said plaintiff, and those through whom he claims said land, did not commence an action to try the validity of said claim within twelve months from the passage of the act af'd.

(10). And for further plea said defendant, by his attorney, says, that the land described in the petition of plaintiff is part of an eleven league claim, situate within the twenty frontier leagues on the United States line; that the plaintiff claims the same by virtue ot a pretended grant purporting to have been issued by the authority of the governor of Coahuila and Texas to one Miguel Arcienega for eleven leagues of land, bearing date on, to wit, the twenty-second day of December, A. D. 1835; that said grant was made upon the conditions expressed in the same, that said grantee would construct within one year fixed and permanent corner posts at each angle of the land, and that he would settle and cultivate the same, and pay the price thereof as required and established by law; that said grantee, and those claiming under him, wholly failed to perform said conditions, or any of them. That on the 9th day of January, A. D. 1841, the congress of the republic of Texas passed an act to quiet the land titles within the twenty frontier leagues bordering on the United States of the North, and in and by said act the plaintiff, who then, to wit, on the day and year last afs'd, claimed said land by virtue of said grant, was required to commence his action within twelve months from the passage of said act, to try the validity of said claim, and to prove the performance of the conditions aforesaid on the trial of said action, and the defendant says that the said plaintiff failed to bring said action and to make said proof, as by said act he was required to do.

(11). And the said defendant for further plea says: That the pretended grant, bearing date on, to wit, the twenty-second day of March, 1835, and purporting to have issued by one Radford Berry, as alcalde of Nacogdoches, to Miguel Arcienaga, under and by virtue of which plaintiff claims the land described in his petition, purports to have been issued by authority of a concession of eleven leagues of land, made by the governor of the State of Coahuila and Texas, bearing date the fifth day of April, A. D. 1831, to said Arcienaga; and the defendant says, that the said Arcienaga did not enter the possession of the land granted in said concession within eighteen months from the publication of the decree of the congress of the State of Coahuila and Texas, numbered (190) one hundred

and ninety, of the 28th day of April, A. D. 1852, as by the 16th article of said decree he was required to do.

HENDERSON, HILL & FRAZER,
Atto's for Defendant.

And afterwards, to wit, on the 10th day of March, 1851, the following order was entered on the minutes:

WILLIAM CHRISTY
vs.
WILEY W. PRIDGEON.

Ordered that this cause be continued until the next term of this court.

And afterwards, to wit, on the 9th day of July, A. D. 1851, it being a day of the May term, 1851, the following order was made in this cause:

WILLIAM CHRISTY
vs.
WILEY W. PRIDGEON.

On this day came the plaintiff, by his attorney, and the defendant being solemnly called, came not, but made default; it is therefore considered by the court, that the plaintiff recover of the defendant the premises in the petition mentioned, and damages for the trespass in the petition set forth; and because those damages are unknown, it is ordered that the marshal be commanded to summon a jury of good and lawful men, to inquire of the damages sustained by the plaintiff by reason of the said trespass committed as aforesaid by the defendant.

And thereupon the plaintiff, by his attorney, in open court, released the damages occasioned by the trespass aforesaid. And thereupon it is ordered that the clerk of this court issue to the marshal a writ of possession, commanding him to deliver possession of the premises, as set forth by metes, bounds and description, in the petition of the plaintiff, and make return, &c. It is further ordered that plaintiff recover of defendant his costs about his suit in this behalf expended, for which he may have execution.

And afterwards, to wit, on the third day of August, A. D. 1853, it being a day of the July term, 1853, the following order was entered on the minutes in this cause:

WILLIAM CHRISTY
vs.
WILEY W. PRIDGEON.

This day came the plaintiff aforesaid, by his attorney, and it appearing to the satisfaction of the court, that the defendant, by his attorney, on the sixth day of October, 1851, agreed, in writing, with the attorney for the plaintiff, to the effect following, to wit:

In the cases known as the Christy cases, in which William Christy is plaintiff, and A. Aiken and other citizens of Harrison county, Texas, are defendants, judgments having been rendered in favor of the defendants, we, the counsel for the plaintiff, and defendants, agree that the plaintiff may select four of said cases, in which to prosecute writs of error; and that the decision of the Supreme Court of the United States, upon the issues heard and determined in the four cases, shall govern and decide the same issues in the other cases, in which writs of error are not prosecuted by the plaintiff, in the same manner as if writs of error were prosecuted in them also.

And the plaintiff's attorney, in pursuance of the said agreement, having selected the following of the said cases, to wit: William Christy vs. James D. Findley, No. 173; William Christy vs. Hiram Henley, No. 177; William Christy vs. William T. Scott, No. 191, and William Christy vs. William Young, No. 203, according to said agreement, writs of error in said cases were prosecuted; and, at the December term, 1852, of the Supreme Court of the United States, the questions arising upon the issues in said cases were finally disposed of and determined in favor of the said William Christy and the judgments reversed, and remanded to this court for further proceeding, and the mandate of the said Supreme Court is now on file in this court. And now, it appearing to the satisfaction of the court that this is one of the cases in which writs of error were not prosecuted, and that the questions of law arising and determined in the said Supreme Court of the United States, on the third, sixth, seventh and ninth pleas in the case of William Christy vs. William T. Scott, No. 191, and in the five pleas in the amended answer in the case of Willian Christy vs. James D. Finley, No. 173, are in every respect the same issues arising out of, and made in pleas numbers three, four, seven, eight, nine, ten and eleven, in this case; wherefore, upon motion of plaintiff's attorney, it is ordered that this action be and the same is hereby reinstated upon the docket of this court. And now, the questions of law arising upon the demurrers of the plaintiff to said pleas coming on, and having been argued, it is considered by the court, *it is considered* that said demurrers to said pleas numbers three, four, seven, eight, nine, ten and eleven be and the same are hereby sustained; and the defendant may, if he thinks proper, amend his pleadings herein.

And afterwards, to wit, on the 18th day of February, it being a day of the January term, 1856, the following order was entered in this cause:

WILLIAM CHRISTY
vs.
WILEY D. PRIDGEON.

On motion of defendant's attorney, and for cause shown, it is

ordered that this cause be continued until the next term of this court.

And afterwards, to wit, on the 12th day of February, a day in January term, 1857, the following order was entered:

WILLIAM CHRISTY
vs.
WILEY D. PRIDGEON.

The plaintiff, by his attorney, suggested the death of defendant. It is ordered that pl'ff have leave to revive this suit, and make proper parties when known.

And afterwards, to wit, on the 12th day of February, a day of January term, 1857, the following order was entered in this cause:

WILLIAM CHRISTY
vs.
WILEY W. PRIDGEON.

The plaintiff, by his attorney in this cause, suggested the death of the defendant; and it appearing to the court that Henderson M. D. Pridgeon is the administrator of the deceased, it is ordered that he be made party defendant in the room and stead of Wiley D. Pridgeon.

And afterwards, on the same day and year last aforesaid, the following proceeding was had in this cause:

WILLIAM CHRISTY
vs.
H. M. D. PRIDGEON, Adm'r, &c.

On this day came the parties, by their attorney, and thereupon came a jury of good and lawful men, viz: Kendalis Bryan, John G. Tod, Jacob Pope, J. F. Waddel, Richard Wells, Samuel Parr, John Corbitt, William Shields, Robert J. Roberts, Charles A. Kaufman, Robert C. Davidson, who being elected, tried, and sworn, well and truly to try the issue joined, and after some progress made in the cause, and not having time to go through the same, by consent of parties, the jury were permitted to disperse until the calling of the cause to-morrow.

And afterwards, to wit, on the same day, the following order was entered in this cause:

WILLIAM CHRISTY
vs.
WILEY D. PRIDGEON.

On this day, before the empanelling the jury in this cause, came the plaintiff, by his attorney; and thereupon said plaintiff suggested the death of the defendant, and it is not denied. And it appearing, to the satisfaction of the court, that Henderson M. D. Pridgeon is the administrator of the goods and chattels, &c.,

of the said defendant, and with the assent of the plaintiff aforesaid, by his attorney, and of the said administrator, by his attorney, it is ordered that this suit be revived in the name of said administrator, and stand in the same light, state, and condition as the same did before the abatement thereof by the death af'd.

And afterwards, to wit, on the fourteenth day of February, the following order was entered in this cause:

WILLIAM CHRISTY
vs.
H. M. D. PRIDGEON, Adm'r.

Further progress having been made in this cause, and not having gone through the same, the jury, by consent of parties, were permitted to disperse until the calling of the cause to-morrow.

And afterwards, to wit, on Monday, the 16th of February, 1857, the following order was entered in this cause:

WILLIAM CHRISTY
vs.
H. M. D. PRIDGEON, Adm'r.

Further progress having been made in this cause, and not having time to go through the same, the jury, by consent of parties, were permitted to disperse until the calling of the cause to-morrow.

And afterwards, to wit, on Tuesday, 17th of February, 1857, the following order was entered in this cause:

WILLIAM CHRISTY
vs.
H. M. D. PRIDGEON, Adm'r.

Further progress having been made in this cause, and not having time to go through the same, by consent of parties, the jury were permitted to disperse until the calling of the cause to-morrow.

And afterwards, to wit, on the 18th day of February, 1857, the following order was entered in this cause:

WILLIAM CHRISTY
vs.
H. M. D. PRIDGEON, Adm'r.

Further progress having been made in this cause, and not having time to go through the same, the jury, by consent of parties, were permitted to disperse until the calling of the cause to-morrow.

And afterwards, to wit, on the 19th day of February, 1857, the following order was entered in this cause:

WILLIAM CHRISTY
vs.
H. M. D. PRIDGEON, Adm'r.

Further progress having been made in this cause, and not having

time to go through the same, the jury were permitted to disperse until the calling of the cause to-morrow.

And afterwards, to wit, on the 20th day of February, 1857, the following order was entered in this cause:

WILLIAM CHRISTY
vs.
H. M. D. PRIDGEON, Adm'r.

Further progress having been made in this cause, and not having time to go through the same, by consent of parties, the jury were permitted to disperse until the calling of the cause to-morrow.

And afterwards, to wit, on the 21st day of February, 1857, the following order was entered in this cause:

WILLIAM CHRISTY
vs.
H. M. D. PRIDGEON, Adm'r.

Further progress having been made in this cause, and not having time to go through the same, by consent of parties, the jury were permitted to disperse until the calling of the cause on Monday morning.

And afterwards, to wit, on the 24th day of February, 1857, the following order was entered in this cause:

WILLIAM CHRISTY
vs.
H. M. D. PRIDGEON, Adm'r.

On this day, after argument of counsel, and the instructions of the court had been given to the jury, they retired to consider of their verdict, and after some time returned into court, and rendered the following verdict, viz: "We, the jury, find for the defendant. J. F. Waddell, foreman."

It is, therefore, considered by the court, that the defendant go hence without day, and that the plaintiff take nothing by his suit, and that the defendant recover of the plaintiff dollars and cents, his costs about his defence expended, for which execution may issue.

And afterwards, to wit, on the 27th day of February, 1857, the following order was entered in this cause:

WILLIAM CHRISTY
vs.
WILEY M. D. PRIDGEON, Adm'r.

On this day came on to be heard the motion of plaintiff for a new trial, filed by plaintiff in this cause. After argument of counsel heard, and the court being now sufficiently advised, it is ordered that the motion be overruled. It is further ordered, that the de-

fendant recover of the plaintiff dollars and cents, his costs about his defence expended, for which execution may issue.

And afterwards, to wit, on the 22d day of April, 1857, the following order was entered in this cause:

WILLIAM CHRISTY
vs.
H. M. D. PRIDGEON, Adm'r.

On motion of plaintiff's attorney, it is ordered that he have four months' time to make up his bills of exception, submit the same to the court for allowance and signature.

And afterwards, to wit, on the first day of August, A. D. 1857, the following bill of exceptions was filed in the clerk's office:

THE UNITED STATES OF AMERICA,
District of Texas, to wit.

District Court at Galveston—January Term, 1857.

WILLIAM CHRISTY
vs.
H. M. D. PRIDGEON, Adm'r.

Be it remembered, that on the trial of this action before a jury, at the present term, the plaintiff, to maintain the issue in his behalf, having first duly proved the execution thereof, read in evidence, without objection, the original testimonio of the title of possession for eleven leagues of land granted and given by Radford Berry, alcalde of Nacogdoches, to Miguel Arciniega, on the 22d day of September, A. D. 1835, in the words and figures following, to wit:

Testimonio, marked A.

Sello 2o.—Doce Reales.

Habilitado pr. el estado de Coahuila y Texas, para el bienio de 1834 y 1835.

BERRY.

Pago el interesado en esta admon. pl. de Nacogdoches, doce reales, valor del antecedente sello.

J. ROBERTS, *Admovinto.*

EXMO. SR: El ciudadano Miguel Arciniega, becino de la ciudad de bejar ante V. E. como mas haya lugar en derecho hace presente. Que desde el ano de 829 derijio una instancia al Exmo. Sor. gob'or que fue de este Estado pretendiendo varios sitios de tierra en las inmediaciones del puerto de Mat- agorda conforme al arto. 24 de la ley de colonizacion, y por motivo de habersele informado particularmente que aquelles sitios los

Confrentado. Corregido.

habia adjudicada el supremo gov'no gral. de la Union a los Sres. Empresarios Howison y Power, se vesolvie apresindir a otro pedimento hacer ahera y considerando que los mas de los envidiablo pr. sus agnos perrenes y abundantes maderas han sido denuncia dos y pedidos por diversos habitantes de aquella municipalidad se va en el impresindible caso de elevar al superior conocimiente de V. E. la presente instancia con el fin de que se digne consederle por via de compra y conforme al arto. 24 de la referida ley de colonizacion, onze sitios de tierra para agistadere en los baldios de este departamente, y a sean todos en un cuerpo, o en distinta partes, con tal que sean acomodables para la crea de ganado bacuno y cabrio, en la inteligencia y ofresco poblarlos cultivados y pagar al Estado de valor, conforme a los plazos que el mismo arto. designa por tanto.

A V. E. reitera su pedmiente que en elle recibira gracia.

Villa de Austin, Marzo 1o, de 1831.

Exmo. Sor. MIGUEL ARCINIEGA.

LEONA VICARIO, *5th de Abril, de* 1831.

Conforme al arto. 24 de la ley de colonizacion de 24 de Marzo, de 1825, otorga en venta al suplicante los onze sitios de tierra que solicita en los valdios del Estado, en el parage que senale, o en el que mas le convenga

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despues de demandados por el cunicimado del supmo. gov'no del Estado general, los suficientes para pago de la que el Estado adenda a la federacion el comisionado pa. el repartimiento de terrenos en la empresa a que correspondan los que el representante solicita y en su defecta o ne estando estos comprendidos en empresa alguna el alcalde primero o el unice de al Confrentado. Corregido. municipalidad respectiva, cunpliendo con las disposiciones dades sobre la materia, lo metera en pocesion de dichos sitios, y espedira el correspondiente titulo, calificardo previamente la calidad de ellos para el senalamto. de lo qe. deve satisfacer al Estado, para cuyo payo le concedo los plazos que designa arto. 22 de la referida ley.

Dese por la s'rio al interesado copia de su peticion y este proveido para que occuriendo con ella al comisionado surta los efectos que sen consiguientes.

LETONA SANTIAGO DEL VALLE, *Srio.*

Lachudo. En aquella municipalidad, si ve. Aquelles vale.

Es copia del orignial que eesiste en el arebisor de la s'ria de mi cargo, de donde se mando sacar por disposicion del Exmo. Sor. gobernador.

Leona Vicario, 6 de Abril, de 1831.

SANTIAGO DEL VALLE, *Secretario.*

[REC. CLXXVI, D. T., 1860.]—3

Al Señor Alcalde Constitucional de la Villa de Nacogdoches:

El ciudadano William G. Logan, vecino de esta municipalidad, con el denido respecto A. V. se presenta diciendo, que por las documentos juridicos, que en debida forma a compano A. V. (los que suplico se mi devuelvan) soy apaderado legitimo del ciudadano Miguel Arceniega vecino de la ciudad de bejar segun consta por el mismo documento en fecha de bejar, a dia 1o de Julio de este mismo año para tomaren pesesion y conseguir el titulo de onze sitios de tierra que fueron concedidos a mi

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dicha paderdante, por el Exmo. Sor. gob'or del Estado conforme al arto. 24 de la ley de colonizacion de 24 de Marzo, de 1825, y cuyos onze sitios los fueron concedidos en clase de venta per el mismo gobierno.

Por tanto A. V. suplico en nom-
Confrentado. bre de mi citado aperdante, mi Corregido.
meta en posecion y mi estiendo

el corespondiente titulo de los citados onze sitios sobre, o en las inmediaciones del Rio Rajo de Natchitoches. Por tanto segundo vez A. V. suplico hacer como tengo pedido, y en el recibire gracia merced y justicia. Jure no proceder de malicia y en el necesario.

Nacogdoches, 9 de Septiembre, de 1835.

WM. G. LOGAN.

NACOGDOCHES, 10 *de Septiembre, de* 1835.

Por presentado y admitido en cuanta haya lugar en derecho, con los documentos que acompana, pase este espediente al ciudadano George Aldrich, para que practique las mensuras del terreno que la parte solicita, para que procede con todo arreglo a las leyes y los notes y mapos de medidos que de el formare me las benietira para que sean traducidos por el ciudadano Juan M. Dor, y con todo a la vista proceder a lo mas que convenga devolviendosele, el poder que pide en la instancia que antecede, asi por este acto lo disperse y firmo con los dos testigos de mi asistencia segun previere la ley doy fe.

RADFORD BERRY.

De asistencia, T. LEPLICHER,
De asistencia, JUAN M. DOR.

Señor Alcalde Constitucional de la Villa de Nacogdoches:

Los onze sitios de tierra, que por la ordin antecedente de V. he medido para el ciudadano Miguel Arciniega, se hacean situados en la forma siguiente los tres primeros entre el salinas y el Rio Rajo de Natchitoches, al sur de la laguna Sciodo, y empiezon en una mojona

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de lo cual un nagal encarcelado de diez y ocho pulgados de diametro, esta al sur veinte y ocho grados al oeste a dos varas y tres quintas de distancia y un uncino colorado de veinte pulgados de diametro, esta al norte veinte grados el oeste, a tres varas de distancia: de alli al norte se medieron

Confrentado. cinco mil varas interesadas, a las Corregido.

mil y cuatro cientas por una cañada, corriendo al este, a las tres mil y dos cientas por un arroyo corriendo al este tambien: y se levanto la segundo mojonera de la cual un nagal encarcelado de quince pulgados de diametro esta al norte selente grados al oeste a onze varas de distancia, y un encino de quince pulgados de diametro esta al sur catorce grados al este a cuatro varas y quinta, de alli al oeste, se medieron quince mil varas, intersecadas a las dos mil y cuatro cientas por un arroyo corriendo al sudeste, a las cinco mil por una cañada corriendo al nordeste a las siete mil por otro cañada corriendo tambien al nordeste a las doce mil y dos cientas por un arroyo corriendo igualmente al nordeste, y se levante la tercera majonera, de la cual un encino chino de quince pulgados de diametro esta al norte cuatro grados al este a cinco varas y dos quintos de distancia: de alli al sur se medieron cinco mil varas intersecadas a las ciento por una cañada corriendo al este a los tres mil y cuatro cientos por otra cañada corriendo tambien al este, y se levanto la cuarta y ultima majonera, de la cual un encino chino de doce pulgados de diametro esta al norte treinta y tres grados al oeste a tres varas y dos quintos de distancia y otro encino chino de catorce pulgados de diametro esta al sur selenta y ocho grados al este a cinco varas y dos quintos de distancia, y de alli al esta se medieron hasta la primera majonera quince mil varas

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intersecadas a las seis mil y setecientos por una cañada corriendo al sudeste, a las onze mil y cuatro cientas por otra cañada corriendo tambien al sudeste y se completaron

Confrentado. tres sitios de tierra, de selenta y Corregido.

cinco millones de varas cuadrados del referido terreno pertenecen quince labores a la clase de temporal, y las sesenta vestantes a la de agortadero, siendo su configuracion la que en duplicado le acompano; tachado; encino; no vale; entrevenglones; nogal encarcelado; vale.

El cuatro sitio de tierra se halla como los anteriores entre el Sabina y Rio Rajo de Natchitoches, al sur de la laguna Sciodo, y empieza en una majonera de la cual un encino colorado de dies y

ocho pulgados de diametro este al norte cuarenta y cuatro grados al oeste a nueve varas y tres quintos de distancia y un nagal encarcelado de diez pulgados de diametro esta al sur ochenta y cuatro, grados al este a sus varas y tres quintos de distancia, de alli al norte se medieron cinco mil varas, intersecadas a las cuatro cientos por un arroyo de dies varas de ancho corriendo al este, a los mil y dos cientos por otro arroyo de quince varas de ancho, corriendo tambien al este, y se lavante, la segunda mojonera de la cual un encino colorado de diez y ocho pulgados de diametro esta al sur sesenta y seis grados al oeste a cuatro varas y quinta de distancia, y un encino roble de doce pulgados de diametro esta al norte selenta y siete grados al este, catorce varas de distancia: de alli al oeste se medieron cinco mil varas y se levanto la tercera mojonera de la cual un nagal en carcelado de diez y ocho pulgados de diametro

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esta al sur veinte, y ocho grados al oeste a dos varas y tres quintos de distancia, y un encino colorado de veinte pulgados de diametro, esta al norte veinte grados al oeste a tres varas de distancia, de alli al sur se medieron cinco mil varas, intersecadas, a las mil por un arroyo de diez varas de ancho corriendo al este, a las mil y cuatro cientas por otro arroyo de dios varas ancho corriendo tambien al este a las dos mil y seis cientos por otro de diez varas de ancho corriendo igualmente al este a las cuatro mil y trecientas por una cañada corriendo lo mismo al este, y se levante la cuarta y ultima mojonera de la cual un nagal encuredado de quince pulgadas de diametro esta al norte quince grados al este a tres varas de distancia, y otro nagal encarselado de quince pulgados de diametro esta al sur ochenta y ocho grados al oeste, a diez y seis varas de distancia, y de alli hasta la primera mojonera se medieron al este cinco mil varas intersecadas a las tres mil por un arroyo de diez varas de ancho corriendo al nordeste, complitandose asi el citado cuarto sitio de tierra que coruta de veinte y cinco millones de varas cuadrados del referido terreno pertenecen seis labores a la clase de temporal y las diez y nueve restantes a la de agostadero, siendo su configuracion la que en duplicado le acompano, y sur maderas, el ohuo, el nagal encarselado, el encino, el encino chino el sasafras, &c. El quinta sitio de tierra se halla entre el Sabina y Rio Rajo de Natchitoches, al sur de la laguna Sciodo en terrenos ocupados por los Indios Cadoes, y empieza en una mojonera de la cual un encino colerado de diez y ocho pulgados de diametro, esta al sur sesenta y seis grados al veste a cuatro varas y quinta de distancia y un encino roble de doce pulgados de diametro esta al norte selenta y siete grados

Confrentado. Corregido.

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Para el bienio de 1834 y 1835.

al este, a caterce varas de distancia, de alli al norte se medieron cinco mil varas intersecadas a las ciente por una cañada corriendo al este a las mil y nove cientas por un arroyo de diez varas de ancho corriendo el este tambien, a las dos mil y seis sientas por una cañada corriendo al sudeste, y se levante la segunda mojonera de la cual un encino chino de diez y seis pulgados de diametro esta al sur aehenta y ocho grados al oeste a cuatro varas y cuatro quintos de distancia, y un nagal encarselado de catorce pulgados de diametro, esta ol norte cuarenta y tres grados al este a siete varas de distancia; de alli al oeste cinco mil varas y se levante la tercera mojonera, de la cual un encino de quince pulgados de diametro esta al sur catorce grados al este a cuatro varas y quinto de distancia y un nagal encarselado de quince pulgados de diametro esta al norte selenta grados al oeste a once varas de distancia, de alli al sur se medieron cinco mil varas intersecadas a las dos mil y ciente por una cañada corriendo al este y se levante la cuarta y ultima mojonera, de la cual un nagal encarselado de diez y ocho pulgados de diametro esta al sur veinte y ocho grados al oeste a dos varas y tres quintas de distancia; y un encino colorado de veinte pulgados de diametro esta al norte veinte grados al oeste a tres varas de distancia, de alli al este se medieron cinco mil varas hasta la primera mojonera completandose asi el quinto sitio de tierra que consta de veinte y cinco millones de varas cuadrados. Del referido terreno, pertenecen cinco labores a la clase de temporal y los veinte vertantes, a la de agostadero, siendo su configuracion la que en duplicado le acompano, y sus maderos el olino, el fresno, el copal, el sasafras y el nagal encarcelado, &c. El sexto el septrino el octravo y el noneno estan situados en el Sulphur Forks

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Sello Cuarto—Una Cuartilla.

Para el bienio de 1834 y 1835.

cerca del Rio Rajo de Natchitoches a unos treinta y cinco millas al oeste del camino que va de Natchitoches al cariniche de Rio Rajo de Natchitoches y empieza en el enegadoze del Sulphur Fork, a quinentas cuarenta varas de su orilla en donde se levante la primera mojonera: de alli al oeste se medieron diez mil varas intesecadas a las tres mil y ochocientos por una cañada corriendo al sudeste, a los siete mil y seis cientos, por el mencionado Sulphur Fork, de treinta varas de ancho corriendo al sudeste, y se levante la segunda mojonera; de alli al norte se medieron diez mil varas, intersecadas a los mil y ciento por dicho

Confrentado. Corregido.

Sulphur Fork de treinta varas de dancho corriendo al sudeste, a las siete mil y quincentas por un arroyo de diez varas de ancho corriendo tambien al sudeste y se levante en un llano la tercera mojonera de la cual un encino blanco de veinte pulgados de diametro esta al norte sesenta y dos grados al este a ciente treinta y siete varas y dos quintos de distancia, y otro encino blanco de quince pulgados de diametro esta al norte setenta y dos grados al este cienta treinta y ocho varas y dos quintos de distancia; de alli al este se medieron diez mil varas intersecados a las dos cientas veinte, por una cañada corriendo al sudeste, a las dos mil y novecientos por otra cañada corriendo al sur, a las a las cuatro mil y ocho cientos setenta, por otra cañada corriendo al sudeste, a las cinco mil por una mojonera que se levante en un llano, de la cual un nagal pecano de quince pulgados de diametro esta al sus veinte y seis grados al este a treinta y tres varas y quinta de distancia y un encino chino de diez y seis pulgados de diametro esta al norte veinte y cinco grados al oeste a ochi treinta varas de distancia a los seis mil novecientos

Sello Cuarto—Una Cuartilla.

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y cuarenta por un arroyo de diez varas de ancho corriendo al sudeste y se levante la cuarta y ultima mojonera en un llano, sin palos de testigos, por no haber los en los inmediaciones y se medieron al sur, hasta la primera mojonera, diez mil varas intersecadas a las dos mil y ocho cientos

Confrentado. por un arroyo corriendo al sudeste de diez varas de ancho, a los Corregido.

ocho mil y dos cientos por otro arroyo de quince varas de ancho corriendo tambien al sudeste completandose asi el apeo de cuatro sitios de tierra, que constan de cien mil varas cuadrados; del referido terreno pertenecen veinte labores a la clase de temporal y las ochenta restantes, a la de agostadero, siendo su configuracion la que en duplicado le acompaño, y sus maderos el nagal pecano el ohuo, el palo blanco el fresno, el nagal encarcelado el encino, &c. El decimo sitio de tierra, esta situada en el margin de Rio Rajo de Natchitoches; y es el primero frente a el mas abajo del arroyo del mineral en donde se levante la primera mojonera, de la cual un cedro de diez y seis pulgados de diametro esta al sur treinta y ocho grados al este, a cinco varas de distancia y un nagal encarcelado de diez pulgados de diametro, esta al norte catorce grados al oeste a tres varas y dos quintos de distancia, y siguiendolo por sus vueltas agua abajo. Se medieron al sur treinta y ocho grados al este quinientos quarenta varas, al norte selenta y un grados al este dos mil y cien varas y se levanto en el mismo margen la segunda mojonera de la cual un hayagil o sea fresno de doce pulgados de diametro

esta al sur debenta y cinco grados al oeste a siete varas y dos quintos de distancia, de alli al sur se medieron dos mil dos cientas cincuenta y tres varas

Sello Cuarto—Una Cuartilla.

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y se levante la tercera mojonera de alli se medieron dos mil y quinientos varas y se levante la cuarta y ultima mojonera, y de alli al norte se medieron nueve mil setecientos, nueve varas hasta la primera mojonera, completandose asi al apeo del decimo sitio de tierra que consta de veinte y cinco millones de varas cuadrados. Del referido terreno pertenecen, seis labores a la clase de temporal a las dies y nueve restantes a la de agostadero siendo su configuracion la que en duplicado le acompano y sus maderos al cedro, el fresno, el enemo, el nagal prieto, el encarelado, el olino, &c., &c.

Confrentado. Corregido.

GEORGE ALDRICH,
Agrimensor.
JUAN M. DOR,
Traductor.

Nacogdoches, *y Septiembre* 18 *de* 1835.

Estando concluida la mensura de los onze sitios de tierra contienen los antecedentes natas practicadas por el agrimensor nombrado al efecto, que el ciudadano Wm. G. Logan, legal apaderado del ciudadano Miguel Arciniega saliesto en su memorial de fecha de nueve del que vige, de que obra este espediente estiendose el titulo correspondiente y de los doce mapos que presente el agrimensor George Aldrich agregandose seis a este espediente y los otros seis al testimonio. Asi lo determine y firme con los testigos de mi asistencia. Segun la ley doy fe.

RADFORD BERRY.

De asistencia, T. Leplicher.
De asistencia, Juan M. Dor.

El ciudadano Radford Berry, alcalde unico constitucional de la villa de Natchitoches, y comisionado por el Supremo Gobierno del Estado para pener en posecion formal. El ciudadano Miguel Arciniega, que como comprador le tiene concedido once sitios de tierra, en este departamento de Natchitoches. Por cuanto el citado Miguel Arciniega, vecino de la ciudad de Bexar, tiene concedidos por el excelentisimo Señor Gobernador once sitios de tierra en clase de comprador segun consta del superior decreto

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Para el bienio de 1834 y 1835.

de fecha cinco de Abril de mil ochocientos treinta y uno, que en copia autenticada ha presentado el referido Miguel Arciniega, por su apaderado Wm. G. Logan y es la misma que hace cabesa a este espediente. En nombre del Estado, le conferio concedo y meto en posesion efectiva y personal de croze sitios de tierra como comprador los cuales dichos once sitios

Confrentado. Corregido.

de tierra estan situados los tres primeros juntos entre el Sabinas y Rio Rajo de Natchitoches, al sur de la laguna Sciodo, y constan de quince labores de temporal, el cuarta tambien entre el Sabina y Rio Rajo de Natchitoches, al sur de la laguna Sciodo, y consta de seis labores de temporal, el quinto igualmente entre el Sabina y Rio Rajo de Natchitoches, al sur de la laguna Sciodo, en terrenos ocupados per los Indios Cadoes, y constan de cinco labores de temporal, el sexte, el septino, el octavo y el noveno, todos juntos en el Sulphur Fork, se Rio Rajo de Natchitoches, a unos treinta y cinco millas del camino que va de Natchitoches al Carinichi del Rio Rajo de Natchitoches, y constan de veinte labores de temporal el decimo en el margen derecho de Rio Rajo de Natchitoches, siendo el primero frente al rio mas abajo del arroyo mineral, y cuesta de seis labores de temporal, y el un decimo y ultimo en el mismo rio colindante cen el decimo, y consta como el de seis labores de temporal y sus linderos por menor estan demarcados en las vatas de medidas, y mapas puestos por el agrimensor ciudadano George Aldrich, los que obran originales agregados a este dicho espediente, de los expresados once sitios de tierra pertenecen cincuenta, y ocho labores a la clase de temporal y las dos cientas dies y siete a la de agostadero

Sello Cuarto—Una Cuartilla.

Para el bienio de 1834 y 1835.

con arreglo a la cual de vera satisfacer al Estado la cantidad de tres cientas neventa y cinco pesos tres reales y cuartillo de conformidad con la dispuesto en el articulo veinte y dos de la ley de colonizacion de veinte y cuatro de Marzo de mil ochocientos veinte y cinco en los plazos que concede el mismo articulo bajo las penas en el establecidos que dondo advertido

Confrentado. Corregido.

que dentro de un año debera construir mojoneros fijas y permanentes en todos los angulos de los terrenos mencionados, y que tambien debe pablarlos, y cultivarlos con tado arreglo y lo dispuesto en la referida ley, cumpliendo esempulesamente con todo quanto en sella y otra se ordena y que jamas los ha de pasar en manes muertas.

Portante: usando de las facultades que un sea concedidos, a virtud del superior decreto de cinco de Abril de mil ochocientos treinta y uno, espido el presente titulo, y mando se saque testimonio de el, y se entregue al interesado, para que pesea y disfrute por sugos propios, los citados once sitios de tierra que se le ha otorgado

el sus hijos herederos y suessores, o quien de el o de ellos causa habiere, aecun o derecho representare por ser asi la valuntad del Estado. Es dado en la villa de Nacogdoches, a los veinte y dos dias del mes de Septiembre, de mil ochocientos treinta y cinco anos, firmandalo y o dicho alcalde con los dos testigos de mi asistencia. Emuendado, seis, vale; entre venglones William G. Logan, vale. Doy fe.

RADFORD BERRY.

De asistencia, T. LEPLICHER.
De asistencia, JUAN M. DOR.

Encuerda este testimonio con su original que existe en al archive de la comision de mi cargo de donde se saco por mi disposicion, va fiel y legalmente copiads confrontads y corregido en trece fojas utiles y necessarias del sello; correspondiente y para su debida constancia lo firmo con dos testigos de mi asistencia en la villa de Nacagdoches a los veinte des dias del mes de Setiembre de mil ochocientos treinta y cinco años doy fe.

RADFORD BERRY.

De asistencia, BENNETT BLAKE.
De asistencia, JUAN M. DOR.

I do hereby certify that the foregoing deed has been duly recorded in my office, in the book of Spanish deeds, pages from No. 21 to 36, as accurately as possibly could be by any person not acquainted with the Spanish language, this the 20th day of October, A. D. 1848.

EDWARD C. BEASLEY, *C. Cl'k.*
By E. CATER, *Dep'ty.*

(*Note.*)

[The outside corner of the foregoing testimonio of title is torn, defaced and partially illegible.

TRANSCRIBER.]

[*For plats numbered* 1, 2, 3, 4, 5 *and* 6, *referred to in testimony marked A, see originals, pages* 46, 47, 48, 49, 50 *and* 51.]

B.

Second Seal—Twelve Rials.

Legalized for the State of Coahuila and Texas, for the two years of 1834 and 1835.

BERRY.

The interested party has paid into this office, for Nacogdoches, twelve rials, the value of the preceding seal.

J. ROBERTS, *Adm'r.*

Petition to the Governor.

Most Excellent Senior: The citizen Miguel Arceniega, a resident of Bexar, before your excellency, so far as he has place in right, represents that since the year 1829, he directed a petition to the most excellent governor of the State, applying for various leagues of land in the immediate vicinity of the post of Matagorda, in conformity to the twenty-fourth article of the colonization law, and by reason of having been informed that those leagues had been adjudicated by the supreme general government of the nation to the seniors the empresarios Hewetson and Powers, he has resolved to resort to another petition, which is now made; and considering that most of the lands desirable, by reason of their water and abundant timber, have been denounced and asked for by divers inhabitants of that municipality, he finds himself under the necessity of bringing to the superior knowledge of your excellency the present petition, with the view that you will please to concede to me, by way of sale and in conformity to the 24th article of the referred to law of colonization, eleven leagues of land, for grazing, in those vacant of this department, either in one body or distinct parts, provided they may be convenient for raising stock of the cow kind and goats, with the understanding that he offer to cultivate, settle and pay for them, the value to the State, in conformity to the terms designated in said article. For so much he repeats his petition, for which he will receive favor.

Town of Austin, March 31, 1831.

Most Excellent Senior,

MIGUEL ARCENIEGA.

Commission.

LEONA VICARIO, *5th April*, 1837.

In conformity to the 24th article of the law of colonization, of the 24th of March, 1825, I concede in sale to the petitioner the eleven leagues of land which he asks in the vacant lands of the State, in the place designated, or in that more convenient, after the demand by the commissioner of the general government of a sufficient for the payment of that which the State is indebted to the federation. The commissioner for the distribution of land, in the empresa to which belongs those which the petitioner asks, and in his absence, and not being comprehended within any empresa, the first or only alcalde of the respective municipality, complying with the disposition given in relation to the subject, will give possession of said leagues and despatch the corresponding title, previously classifying the quality of them, for the ascertainment of that which ought to be paid to the State; for which payment I grant the terms designated in article twenty-two of the law referred to. Given by the secretary of the interested party, a copy

of this his petition and this decree, in order that, going with it to the commissioner, the effects may be had which are consequent.

LEONA SANTIAGO DEL VALLE,
Secretary.

This is a copy of the original which remains in the archive of the secretary's office, under my charge, whence I am commanded to take it by the direction of the most excellent senior the governor.

Leona Vicario, 6th April, 1831.

SANTIAGO DEL VALLE,
Secretary.

Petition to Alcalde.

The Senior Constitutional Alcalde of the Town of Nacodoches:

The citizen William G. Logan, a resident of this municipality, with the proper respect presents himself to you, saying, that by the juridical documents which in proper form are presented with this to you, (and which ought to be returned,) I am the legitimate attorney of Miguel Arceniega, a resident of the city of Bexar, as appears by said document, dated at the city of Bexar, the first day of July of this year, for the purpose of taking possession and obtaining title to eleven leagues of land which were conceded to my said constituent by the most excellent governor of the State, in conformity to the 24th article of the law of colonization of the 24th day of March, 1825, and which eleven leagues were conceded in the class of sale by the same government, for so much, in the name of my constituent. I request you to place me in possession, and extend the corresponding title of said eleven leagues, upon or in the immediate neighborhood of the Red river of Natchitoches. Again, a second time, I request you to do as I have asked, and in which I will receive grace, favor and justice. I swear not to proceed in malice, but of necessity.

Nacogdoches, 9th September, 1835.

WILLIAM G. LOGAN.

NACOGDOCHES, 10*th September*, 1835.

Presented and submitted, in as far as there is place in right, with the documents annexed. Pass this despatch to the citizen George Aldritch, so that he may make a survey of the land which the party solicits, in order to a proceeding, according to every regulation, and the notes and maps of survey which of it you shall make you shall forward to me for translation by the citizen John M. Dor, and with all in view to proceed according to that more convenient. Let the power asked for in the preceding petition be

returned. Thus, by this act, I decree and sign, with the two witnesses of my assistance. As the law provides, I give faith.

RADFORD BERRY.

Ass., T. LEPLICHER,
Ass., JOHN M. DOR.

Survey No. 1, *three Leagues—1st Count of Declaration.*

Senior Constitutional Alcalde of the town of Nacogdoches.

Survey.

The eleven leagues of land which, by your preceding order, I have surveyed for the citizen Miguel Arciniega, is found situated in the form following: The three first between the Sabine and Red river of Natchitoches, south of Soda lake, and commences at a corner from which a hickory eighteen inches in diameter is south twenty-eight degrees west, two and three-fifth varas distant, and a red-oak twenty inches in diameter north twenty degrees west, three varas distant; thence run north five thousand varas, intersecting at one thousand four hundred varas a valley running east; at three thousand two hundred varas, a creek also running east, and raised the second corner, from which a hickory fifteen inches in diameter is north twenty degrees west, eleven varas distant, and an oak fifteen inches in diameter is south fourteen degrees east, four and one-fifth varas; thence run fifteen thousand varas west, intersecting at two thousand four hundred varas, a creek running southeast; at five thousand a valley running northeast; at seven thousand another valley running also northeast; at twelve thousand two hundred a creek running also northeast, and raised the third corner, from which a black-jack fifteen inches in diameter is north four degrees east, five and two-fifth varas distant; thence run south five thousand varas, intersecting at one hundred varas, a valley running east; at three thousand four hundred another valley also running east, and raised the fourth and last corner, from which a black-jack twelve inches in diameter is north twenty-three degrees west, three and two-fifth varas distant; and another black-jack fourteen inches in diameter is south seventy-eight degrees east, five and two-fifth varas distant; thence run east fifteen thousand varas to the first corner, intersecting at six thousand seven hundred varas a valley running southeast; at eleven thousand four hundred another valley running also southeast; and at twelve thousand four hundred another valley running also southeast, and completed three leagues of land of seventy-five million square varas of the land referred to; fifteen labors belong to the class of temporal, and sixty to pasture land, its figure being that which in duplicate is annexed.

Survey No. 2—*Third Count.*

The fourth league, like the last, is found between the Sabine and the Red river of Natchitoches, south of Soda lake: beginning at a corner from which a red-oak eighteen inches in diameter is north forty-four degrees west, nine and three-fifth varas distant, and a hickory ten inches in diameter is south eighty-four degrees east, six and three-fifth varas distant; thence run north five thousand varas, intersecting at four hundred varas a creek of ten varas in width running east; at one thousand two hundred another creek fifteen varas in width running also east; at four thousand five hundred varas another creek of ten varas in width also running east, and raised the second corner, from which a red-oak eighteen inches in diameter is south sixty-six degrees west, four and one-fifth varas distant, and an overcup oak of twelve inches in diameter is north seventy-seven degrees west, fourteen varas distant; thence run west five thousand varas, and raised the third corner, from which a hickory eighteen inches in diameter is south twenty-eight degrees west, two and three-fifth varas distant, and a red-oak twenty inches in diameter is north twenty degrees west, three varas distant; then run south five thousand varas, intersecting at one thousand a creek ten varas in width running east; at one thousand four hundred another creek ten varas in width running also east; at two thousand six hundred another creek ten varas in width running also east; at four thousand three hundred a valley running also east; and raised the fourth and last corner, from which a hickory fifteen inches in diameter is north fifteen degrees east, three varas distant; and another hickory fifteen inches in diameter is south eighty-eight degrees west, sixteen varas distant; thence run to the first corner east five thousand varas, intersecting at three thousand a creek ten varas in width running northeast; completing this, the fourth league of land, which contains twenty-five millions square varas. Of the said land six labors belong to the class of temporal, and the nineteen remaining to pasture land, being in form that which in duplicate is annexed; its timber being elm, hickory, oak, black-jack, and sassafras, &c.

Survey No. 3, *one League—Third Count.*

The fifth league of land is found between the Sabine and the Red river of Natchitoches, south of Soda lake, in lands occupied by the Caddo Indians, and beginning at a corner from which a red oak, eighteen inches in diameter, is south sixty-six degrees west, four and one-fifth varas distant, and an overcup oak, twelve inches in diameter, is north seventy-seven degrees east, fourteen varas distant; thence north, run five thousand varas, intersecting at one hundred varas a valley running east, at one thousand nine hundred a creek, running also east, ten varas in width, at two

thousand six hundred a valley, running southeast, and raised the second corner, from which a black-jack, sixteen inches in diameter, is south eighty-eight degrees west, four and four-fifth varas distant, and a hickory, fourteen inches in diameter, is south forty-three degrees east, seven varas distant; thence run west five thousand varas, and raised the third corner, from which an oak, fifteen inches in diameter, is south fourteen degrees east, four and one-fifth varas distant; and a hickory, fifteen inches in diameter, is north seventy degrees west, eleven varas distant; thence south five thousand varas, intersecting at two thousand one hundred varas a valley running east, and raised the fourth and last corner, from which a hickory, eighteen inches in diameter, is south twenty-eight degrees west, two and three-fifth varas distant, and a red oak, twenty inches in diameter, is north twenty degrees west, three varas distant; thence run east, five thousand varas, to the first corner; completing thus the fifth league of land, which contains twenty-five million square varas. Of the said land five labors belong to the class of temporal, and the twenty remaining to that of pasture land, the form being that which in duplicate is annexed, and its timber gum, oak, elm, ash, sassafras, and hickory, &c.

Survey No. 4—Four Leagues.

The sixth, seventh, eighth and ninth, on the Sulphur fork, near the Red river of Natchitoches, thirty-five miles west of the road from Nacogdoches to the Keamichi of the Red river of Nacogdoches, in the overflow of the Sulphur fork, five hundred and forty varas from its bank, where was raised the first corner; thence run west, ten thousand varas, intersecting at three thousand eight hundred varas a valley running southeast; at seven thousand six hundred the said Sulphur fork, thirty varas in width, running southeast, and raised the second corner; thence south, nineteen thousand varas, intersecting at one thousand one hundred varas said Sulphur fork, thirty varas width, running southeast; at seven thousand five hundred varas a creek, ten varas in width, running also southeast, and raised the third corner, from which a post-oak, twenty inches in diameter, is south sixty-two degrees east, one hundred and thirty-seven and two-fifth varas distant; and another post-oak, fifteen inches in diameter, is north seventy-two degrees east, one hundred and thirty-eight and two-fifth varas distant; thence run east, ten thousand varas, intersecting at two hundred and twenty a valley running S. east; at two thousand nine hundred another valley, running south; at four thousand eight hundred and sixty another valley, running southeast; at five thousand a corner raised in the plain, from which a pecan, fifteen inches in diameter, is south twenty-six degrees east, thirty-three and one-fifth varas distant; and a black-jack, sixteen inches in diameter, is north twenty-five degrees west, eighty varas distant; at

six thousand nine hundred and forty a creek, ten varas in width, running southeast, and raised the fourth and last corner in the plain, without bearing trees, not having them in the vicinity; thence south, to the first corner, ten thousand varas, intersecting at two thousand eight hundred varas a creek, running southeast, ten varas in width; at eight thousand two hundred another creek, fifteen varas in width, running also southeast, which contains one hundred million square varas. Of the said land twenty labors belong to the class of temporal, and the eighty-eight remaining to that of grazing, its figure being that which in duplicate is annexed, and its timber is pecan, elm, hackberry, ash, hickory, oak, &c.

Survey No. 5—*One League.*

The tenth league is situated on the Red river of Natchitoches, and is the first in front, and rather below the mineral creek, where was raised the first corner, from which a cedar, sixteen inches in diameter, is south thirty-eight degrees east, five varas distant; and a hickory, ten inches, is north fourteen degrees west, three and two-fifth varas distant, and following the meanders, descending the river, south thirty-eight degrees east, five hundred and fifty varas, north seventy degrees east, two thousand one hundred varas, and raised on the same margin of the river the second corner, from which a beech, it may be an ash, twelve inches in diameter, is south eighty and five degrees west, seven and two-fifth varas distant; thence run south ten thousand two hundred and fifty-three varas, and raised the third corner; thence run west, two thousand five hundred varas, and raised the fourth and last corner; thence run north, nine thousand seven hundred and nine varas, to the first corner, thus completing the boundary of the tenth league, which contains twenty-five million square varas. Of the said land six labors belong to the class of temporal, and the remaining nine to that of pasture land. Its form is that which in duplicate is annexed; and its timber cedar, ash, elm, black walnut, hickory, &c.

Survey No. 6—*One League.*

The eleventh and last league of land is found situate on the right margin of the Red river of Natchitoches, and is the second fronting and rather below the Mineral creek, and beginning on the margin of said river, at a corner from which an ash twelve inches in diameter is south eighty-five degrees west, seven and two-fifth varas distant; thence following the meanders of the water downwards, north seventy-one degrees east, two thousand six hundred and fifty varas, and raised the second corner, from which an oak twenty inches in diameter is south forty-two degrees west, three and two-fifth varas distant, and another oak fourteen inches in diameter is north sixty-six degrees west, six and two-fifth varas

distant; thence run south ten thousand four hundred and twenty-two varas, and raised the third corner; thence run west two thousand five hundred varas, and raised the fourth and last corner; thence north run nine thousand five hundred and seventy-six varas, to the first corner, thus completing the boundary of the eleventh and last league of the land conceded to the said citizen Miguel Arciniega, which, like all the others, contains twenty-five million square varas. Of the said land, six labors belong to the class of temporal, and the remaining nineteen to that of pasture land; its form being that which, in duplicate, is annexed; and its timber is black walnut, hickory, elm, &c.

GEORGE ALDRITCH.

JOHN M. DOR.

Nacogdoches, September 18th, 1835.

Adjudication.

The survey being concluded of the eleven leagues of land contained in the preceding notes made by the surveyor appointed for that purpose, which the citizen William G. Logan, the legal attorney for the citizen Miguel Arciniega, solicited in his memorial of the date of the month of that which now is. When this despatch was made, the corresponding title extended, and the twelve maps presented by the surveyor, George Aldritch, annex six to this despatch, and the other six to the testimonio. Thus I determine, and sign with two witnesses of my assistance, according to law. I certify.

RADFORD BERRY.

Ass., T. LEPLICHER,
Ass., JOHN M. DOR.

The citizen Radford Berry, the only constitutional alcalde of the town of Nacogdoches, and commissioned by the supreme government of the State to place in formal possession the citizen Miguel Arciniega, who, as purchaser, has conceded to him eleven leagues of land in this department of Nacogdoches. Forasmuch as the said Miguel Arciniega, a resident of the town of Bexar, has conceded to him by the most excellent senior, the governor, eleven leagues of land in the class of purchaser, as appears by the superior decree of the date of the fifth day of April, 1831, which in an authenticated copy said Miguel Arciniega has presented by his attorney, William G. Logan, and is the same which is at the head of this despatch, in the name of the State I confer, concede, and place him in possession, effective and personal, of eleven leagues of land, as purchaser; which said eleven leagues of land are situated, the three first united, between the Sabine and the Red river of Natchitoches, south of Soda lake, and contain fifteen labors of temporal land;

Possession given.

the fourth also between the Sabine and the Red river of Natchitoches, south of Soda lake, and contains six labors of temporal land; the fifth likewise between the Sabine and the Red river of Natchitoches, south of Soda lake, in lands occupied by the Cado Indians, and contains five labors of temoral lands; the sixth, seventh, eighth and ninth, all united on the Sulphur fork of Red river of Natchitoches, thirty-five miles from the road which runs from Nacogdoches to the Kamichie of the Red river of Natchitoches, and contains twenty labors of temporal lands; the tenth, on the right margin of the Red river of Natchitoches, being the first fronting on the river, rather below Mineral creek, and contains six labors of temporal land; and the eleventh and last on the same river, bounding on the tenth, and contains six labors of temporal land; and their lines, at the least, are indicated in the notes of the survey, and marks given by the surveyor, George Aldritch, the originals of which are annexed to this despatch. Of the said eleven leagues of land, fifty-eight belong to the class of temporal and two hundred and seventeen to that of pasture land, for which, according to the rule, he ought to pay to the State the quantity of three hundred and ninety-five dollars three rials and one-fourth of a rial, in conformity to the provision of the article twenty-two of the law of colonization of the 24th day of March, 1825, on the terms conceded in said article, under the penalty established in it, with the understanding, that within one year he ought to construct corners, fixed and permanent, in all the corners of the before mentioned land, and also ought to settle and cultivate, according to the rule established by the referred to law, complying scrupulously with whatever else in it, or another is ordained, and that it can never pass in mortmain.

Title issued.

For so much, using the faculties conceded to me in virtue of the superior decree of the 5th of April, 1831, I despatch the present title, and command a testimonio thereof to be taken and delivered to the party interested, so that he may possess and take the fruits on his own account, of the said eleven leagues of land, which to him I have granted—him, his children, heirs and successors, or whoever of him or of them shall have action or right of representation, for such is the will of the State.

This given in the town of Nacogdoches, the twenty-second day of the month of September, in the year one thousand eight hundred and thirty-five, I, said alcalde, signing with two witnesses of my assistance. Amended—*sus*, be good, interlined; Wm. G. Logan, be good. I certify.

RADFORD BERRY.

Ass., T. LEPLICHER,
Ass., JOHN M. DOR.

[REC. CLXXVI, D. T., 1860.]—5

This testimonio agrees with the original which remains in the archive of the commission of my charge, whence it is taken by my direction, being truly and legally copied, compared and corrected, on thirteen useful and necessary leaves of the corresponding seal, and for its due perpetuity I sign it with two witnesses of my assistance, in the town of Nacogdoches, the twenty-second day of the month of September, in the year one thousand eight hundred and thirty-five. I certify.

RADFORD BERRY.

Ass., BURNETT BLAKE,
Ass., JOHN M. DOR.

The said plaintiffs then offered to read as evidence to the jury a testimonio of a power of attorney, in Spanish, from Miguel Arciniega to William G. Logan, dated the first day of July, 1835, which was read without objection, and is in the words and figures following, to wit:

Testimonio C.

Sello Segundo—Doce Reales.

Para el bienio de 1832 y 1833, 1834 y 1835.

FLORES. [SEAL.]

In la ciudad de Bejar, a primero de Julio de mil ochocientos treinta y cinco, ante mi el ciudadano Luciano Navarro, juez de primero instancia, y testigos instrumentales que al fui se nominaran a mas de los de mi asistencia se presente el ciudadano Miguel Arciniega de esta vecindad y dijo: que por el presente otorga du y confiere todo su poder amplio cumplido y bastante cuanto por derecho se requiere y sea mercatoria mas pueda y valor deba al Sor. Mr. William G. Logan, vecino de Nacogdoches, especialmente para que en representacion y uso de los derechos y acciones que competen al otorgante solicite de la persona a personas autorigados al efecto la posecion y amparo del titulo de once sitios de tierra que se le concedio al referido otorgante por el supremo gobierno del Estado de Coahuila y Texas por decreto cinco de Abril de mil ochocientos trienta, y uno pudiendoles colocar en los baldios de Texas, y facultandole para poderlos vender en los terminos que mejon le combenga a su apoderado siendo por cuenta de este la obligacion de pagar y poblan el terreno dicho como estaba obligado con el supremo gobierno el otorgante y ademas que el nominado William G. Logan, esoque, por su cuenta los gastos para la espedieron del titulo o titulos de posecion y en concequencia delce sor en un todo confirme al combenio que ha precedido con el Sor. M. Benar en treinte y uno de Abril del presente año, contrabido a que por cuenta del otorgante no debe espensarse gasto alguno a se de su apoderado pues para todo lo dicho su anexso conserniento, incidente y dependiente le confiero al referido William G. Logan, el mas amplio y estenso

poder sin limitacion y sin que por falta de clansula o requicito que aqui se exprese deje de obrar los efectos correspondientes a que va derijido el presente pader pues cual quiera que sea la da aqui por inserta como si estubiera escrita y para que pueda nombrar subrientos revvearlos y elegir otro de nuevo con libre franca y general administracion pues al presente y todos los demas los recleva en cuanto el derecho le primita, y a estar y pasar por todo lo que su dicho apoderado hisiere o practicare obliga su persona y bienes en todo forma y renuncia las leyes de su favor y defensa: in cuyo testimonio asi lo otorga y firmo siendo testigos instrumentales los ciudadanos Domingo Bristello, José Cariano, y Nicolas Flores todos de estos recindad, y mas los de mi asistencia con quienes actuo en la forma ordinaria por falta de escribano publico en los terminos que el derecho previerie de que doy fe.

LUCIANO NAVARRO,
MIGUEL ARCINIEGA.

De ass'a, YGNACIO AROCHA,
De ass's, MANUEL PEREZ.

Concuerda con su orignial le antecedente copia que mande sacar a pedimente verbal del interesado hoy dia de su otorgamento y firme con los de mi asistencia de que doy fe.

LUCIANO NAVARRO.

De ass'a, YGNACIO AROCHA,
De ass'a, MAN'L PEREZ.

And in connection therewith, also read in evidence without objection, a translation of said testimonio in the words and figures following, to wit:

Seal Second—Twelve Reals.

For the two years of 1832 and 1833, 1834 and 1835.

FLOREZ. [L. S.]

In the city of Bexar, the first day of July, 1835, before me, the citizen Luciano Navarro, judge of the first instance, and the instrumental witnesses which at the end are enumerated, besides those of my assistance, was present the citizen Miguel Arciniega, of this vicinity, and said that he conceded, gave, and conferred all his power, ample, complete and sufficient, as much as the law shall require, and as may be necessary, as much as can and ought to be, to Mr. William G. Logan, a resident of Nacogdoches, especially that in representation and in the use of the rights and action of the constituent, he may here obtain from the person or persons authorized to that effect, the possession and protection of the title of eleven leagues of land, which is conceded to the constituent, by the supreme government of the State of Coahuila and Texas, by decree of the 5th of April, one thousand eight hundred and thirty-one, giving him power to locate them on vacant lands,

and giving him power to sell them on the terms most convenient to his attorney, being on this account bound to pay for and cultivate the said lands, as the said constituent is bound to the supreme government; and besides, the said William G. Logan, on his own account, is to pay the expenses for the despatch of the title or titles of possession, and conform in all things to the agreement preceding with the Senior Benar, of the twenty-first of April, the present year, contracting for which on account of the constituent, he can incur no expense, but only on the account of the attorney; this the whole which has been said, its connections, incidents, relations and dependants; he confers on the said William G. Logan the most ample and exclusive power, without limitation; and besides, by reason of a clause or requisite, which is here not inserted; this should fail to operate, the consequent effects to which this power is directed, then whatever it may be, he gives it as for now inserted, as if it was actually written, and for which he can appoint substitutes, revoke and appoint others anew, which a free, frank, and general administration, as far as the law permits; and that everything *me be* and pass, done by said attorney, he binds his person and goods in all form, and renounces the laws in his favor and defence. In testimony of which, this be agreed and signed, being instrumental witnesses, the citizens Domingo Bristello, Jose Casiano, and Nicholas Florez, all of this vicinity, besides those of my assistance, with whom I act in the ordinary form in absence of a notary public, in the form which the law provides, of which I give faith.

LUCIANO NAVARRO,
MIGUEL ARCINIEGA.

Ass., IGNACIO AROCHA,
Ass., MANUEL PEREZ.

The preceding copy agrees with the original, which, on the day of its execution, I commanded to be taken, upon the verbal petition of the party interested, of which I give faith.

LUCIANO NAVARRO.

Ass., IGNACIO AROCHA,
Ass., MANUEL PEREZ.

The said plaintiff then offered to read as evidence to the jury the copy of a notarial authentic act of conveyance from William G. Logan, acting for himself and as attorney in fact for Miguel Arciniega, to Andrew Hodge, jr., dated on the 23d day of March, 1836, before William Christy, a notary public in the city of New Orleans, State of Louisiana, and certified by said Christy, under his hand and seal of office, on the ninth day of May, 1849, to be a true copy, with the authentification thereof by the governor, to the reading of which the defendant by his counsel objected, because—

First. The said conveyance was not authentic at the date of its

execution, and is not now, having been made before a foreign notary, and not before an officer of the republic of Mexico, or of any State thereof, and the same cannot make proof as an authentic act.

Second. The official character of the notary before whom the said conveyance was executed is not proved.

Third. The original of said paper was not authorized or required by the law of Louisiana to be thus executed or recorded, and is not legally or properly a record of any office in said State of Louisiana, being extra territorial and extra official in said State, and without legal effect therein; and the transcript or copy is not properly proved, not being within the perview of the act of Congress of March 27th, 1804.

Fourth. The execution of the original conveyance is not proved.

Fifth. The non-production of the testimonio of said conveyance is not accounted for.

Sixth. The power of attorney dated 22d September, 1835, by authority of which said conveyance purports to be made is not produced, or accounted for.

Seventh. By the said conveyance there is no sufficient description by which to pass the estate in the eleven leagues of land referred to in the foregoing grant to Miguel Arciniega. But the court overruled the objection, and the defendant excepted, and said copy was read in evidence, and is in the words and figures following, to wit:

STATE OF LOUISIANA,
City of New Orleans.

Be it known, that this day, before me, William Christy, a notary public in and for the said city and parish of New Orleans, duly commissioned and qualified, personally came and appeared William G. Logan, of Nacogdoches, Texas, herein acting in his own name as well as in his capacity of agent and attorney in fact of Miguel Arciniega, of San Antonio, Texas, who declared, that for and in consideration of the sum of six thousand five hundred dollars to him in hand paid by Andrew Hodge, jr., of this city, the receipt whereof is hereby acknowledged, he does by these presents, for himself, his heirs and assigns, as well as for the said Miguel Arciniega, his heirs and assigns, grant, bargain, sell and convey, unto the said Hodge, present accepting, purchasing for himself, his heirs and assigns, eleven leagues of land, situated on Red river and Sulphur fork, in Texas, being the same granted to the said Arciniega, and conveyed to the said Logan under a power of attorney on the 22 day of September, 1835: to have and to hold the said lands unto the said purchaser, his heirs and assigns, to their proper use and behoof forever; it being well understood, however, that said vendors give no guarantee for the title of said lands, except against their own acts, nor are they to be liable for any claims or demands whatsoever which may be against them.

But they hereby subrogate the said purchaser to all the rights and action of warranty which they themselves have or may have against their grantors, fully authorizing said purchaser to exercise the said rights and actions in the same manner as they themselves might or could have done.

This done and passed in my office, at the city of New Orleans aforesaid, in the presence of W. G. Latham and W. C. Reynolds, witnesses of lawful age and domiciliated in this city, who hereunto subscribe their names, together with the said appearers and me, the said notary, on this twenty-third day of March, in the year of our Lord one thousand eight hundred and thirty-six.

Original signed: Wm. G. Logan, A. Hodge, jr., Wm. G. Latham, Wm. C. Reynolds; William Christy, Not. Pub.

STATE OF LOUISIANA,
City of New Orleans.

I, William Christy, a notary public in and for the city and State aforesaid, do hereby certify that the foregoing pages (one and a portion) contain a true copy of the original authentic act of conveyance from William G. Logan, for himself and as agent for Miguel Arciniega, to Andrew Hodge, jr., for lands in Texas, of the date of the twenty-third of March, in the year of our Lord one thousand eight hundred and thirty-six, and of record in my office.

In testimony whereof, I hereto subscribe my name and cause my seal of office to be hereto affixed at New Orleans, this 9th day of May, 1849.

WILLIAM CHRISTY,
Not. Pub.

[L. S.] UNITED STATES OF AMERICA,
State of Louisiana.

By Isaac Johnson, Governor of the State of Louisiana.

These are to certify that William Christy, whose name and seal of office are affixed, is now, and was at the time of affixing the same, a notary public in and for the city of New Orleans, State aforesaid, duly commissioned and sworn according to law, and that his certificate and attestation aforesaid are in due form of law, and by the proper officer.

Given under my hand at New Orleans, and the seal of the State, this 16th day of May, one thousand eight hundred and
[L. S.] forty-nine, and of the independence of the United States seventy-three.

ISAAC JOHNSON.

By the governor:
CHARLES GAYARRE,
Secretary of State.

The plaintiff then offered to read in evidence a copy of a paper purporting to be a conveyance from Andrew Hodge, jr., to William Christy, dated August 6th, 1836, before a notary public in Louisiana, which, together with the certificate of authentification thereof, is in the words and figures following, to wit:

STATE OF LOUISIANA,
City of New Orleans.

Be it known, that this day, before me, Hilary Breton Cenas, a notary public in and for the said city and parish of New Orleans, duly commissioned and qualified, personally came and appeared Andrew Hodge, junior, of this city, unmarried, who declared, for the consideration hereinafter expressed, he does by these presents grant, bargain, sell, and convey unto William Christy, also of this city, present and accepting, and purchasing for himself, his heirs and assigns, all the right, title, interest, and claim which he, the said Hodge, has, in or to certain tracts or parcels of land situate in the republic of Texas, and of the discription following, to wit:

First. Eleven leagues situate on Red river and the Sulphur fork of Red river, being the same granted to Migual Arciniega, and purchased from him by William G. Logan on the 22d September, 1835, and conveyed to the said Hodge by the said Logan by an act passed before the said Christy, notary, on the 23d day of March last—say leagues 11.

Second. His undivided half part of three other leagues, held by and owned in common by him and Nathaniel A. Ware, who lately sold his interest to William L. Hodge and Thomas Oxnard, junior; one situate on the waters of the Natchez river, about thirty, five or forty miles southwest of Nacogdoches, granted to Macedonio Carmona, and purchased by the said Logan on the 10th of October, 1835; one situate on White Rock creek of Trinity river, sixty miles west-by-south from Nacogdoches, granted to Francisco Martinez and purchased by the said Logan on the 5th September, 1835, and one situated on the Natchez river, about thirty or thirty-five miles southwest from Nacogdoches, and near the land granted to the said Macedonio Carmona, which was granted to Rafael Borcero, and purchased by the said Logan on the 25th September, 1835, which said undivided half part of the said three leagues was purchased by the said Hodge from the said Logan by an act passed before the said Christy, notary, on the said 23d day of March last—say leagues 1½.

Third. The one undivided half part of six leagues, situate in Mariana and Manuel Lopez's grant of twenty-two leagues, the title to which consists in sundry documents to be referred to, in a statement hereinafter to be made by the said Hodge and the said Christy, and designated by the letters A B C—say 3.

Fourth. The one undivided half part of two leagues, situate northwest of Soda lake, four miles from the Sulphur fork, in Jesus Canton's grant of eleven leagues, titles to be referred to in the statement named in the above paragraph, and marked D E F—say leagues 1.

Fifth. The one undivided half part of two leagues, one adjoining the town of Jonesborough, on Red river, in the grant to Marceline Salas, and one situate on the bank of Red river, below Little river, and adjoining a survey of Allen's, in a grant to José Antonio Sepulveda, titles to be referred to in a statement named in the above third paragraph, and marked G H—say leagues 1.

Sixth. The one undivided half part of eleven leagues, consisting of tracts of one league each, situate partly on the Natchez river, about thirty or forty miles from Nacogdoches, and partly on White Rock creek, granted to the following named persons, to wit: Maria J. Tons, Conception Santa Cruz, Maria S. Cortez, Julio Savais, Francisco Paires, Manuel Juscan, Eleterio Lopez, Anulacea Barrella, Miguel Tores, Maria B. Cruz, and Juan Carmon, each one league, the titles to be referred to in statement named in the above third paragraph, and marked J K—say leagues 5½.

Amounting in all to twenty-three leagues, or one hundred and one thousand eight hundred and forty-four acres—leagues 23; acres 101,844.

To have and to hold the said land to the purchaser, his heirs and assigns, to their own proper use and behoof forever. This sale is made for and in consideration of the sum of fifty cents per acre, in payment of which the said Christy has given his six several promissory notes for the sum of eight thousand four hundred and eighty-seven dollars each, drawn to the order and endorsed by me, notary aforesaid, all dated this day, and made payable, two in two years, two in three years, two in four years, after date, with interest thereon at the rate of eight per cent. per annum, payable at the end of each and every year.

It is well understood by and between the said parties, that the said Hodge gives no guarantee or warranty title to any of said lands, but that in case he should fail in procuring the necessary titles from the heirs of said Logan for such of the said lands as are described under the third, fourth, fifth, and sixth heads of this act, then and in that case he shall deduct from the notes of said Christy, which he has given for the payment for the said lands, as they shall respectively fall due, the amount of the said lands, as described in the said third, fourth, fifth, and sixth heads, at the said rate of fifty cents per acre.

Thus done and passed in my office, at the said city of New Orleans, in the presence of Joseph J. Weekes and Robert Taylor, witnesses of lawful age and domiciliated in this city, who hereunto sign their names with the said parties, and me, the said notary,

on the sixth day of August, in the year one thousand eight hundred and thirty-one.

Original signed: A. Hodge, jr., Wm. Christy, J. J. Weekes, R. Taylor; H. B. Cenas, Not. Pub.

STATE OF LOUISIANA,
City of New Orleans.

I, Hilary B. Cenas, a notary public in and for the city and State aforesaid, do hereby certify that the three foregoing *three* pages and six lines contain a true copy of the original authentic act of conveyance from Andrew Hodge, jr., to William Christy for lands in Texas, of the date of the 6th of August, A. D. 1836, and of record in my office.

In testimony whereof, I have hereunto subscribed my name and caused my seal of office to be hereunto affixed, at New Orleans, this fourteenth day of May, A. D. 1849.

[L. S.]

H. B. CENAS,
Not. Pub.

[L. S.] UNITED STATES OF AMERICA,
State of Louisiana.

By Isaac Johnson, Governor of the State of Louisiana.

These are to certify that Hilary Breton Cenas, whose name and seal of office are affixed to the annexed certificate, is now, and was at the time of affixing the same, a notary public in and for the city of New Orleans, State aforesaid, duly commissioned and sworn according to law, and that his certificate and attestation aforesaid are in due form of law, and by the proper officer.

Given at New Orleans under my hand and the seal of the State, this 16th day of May, one thousand eight hundred and forth-nine, and of the independence of the United States seventy-three.

[L. S.]

ISAAC JOHNSON.

By the governor:
CHARLES GAYARRE,
Secretary of State.

To the reading of which evidence the defendant, by his counsel, objected, on like grounds and reasons with those taken to the preceding document, but the said objection was overruled, and the said copy was read in evidence, and the defendant excepted. And here the plaintiff rested.

The defendant then, to maintain the issue in his behalf, gave in evidence to the jury, without objection, an admission of the parties by their counsel, as follows, to wit:

On the trial, the following shall be the admitted facts: that the land in controversy, or that embraced within the boundary of the

grant under which plaintiff claims, was, at the date of said grant, and remained, within the twenty frontier leagues bordering on the United States line of the North; and the plaintiff will offer no evidence on the trial, other than the grant under which he claims, conducing to show the assent or approbation of the national Executive of the republic of Mexico to the making of said grant; and it was admitted by the parties, that Hodge, when he purchased from Arciniega, and Christy, when he purchased of Hodge, were, and continued to be, citizens of Louisiana, and never were citizens of Texas or Mexico, or domiciled therein. And here, without giving further evidence, the said defendant, by his counsel, moved the court to exclude the evidence given in behalf of the plaintiff from the consideration of the jury, on the ground that the title of possession or grant to Miguel Arciniega, under which the plaintiff claims, is, and was when issued, illegal and void, being then and now situated within the twenty leagues bordering on the United States of the North; and also upon the ground that said Hodge and Christy could not take by purchase, being both aliens when they respectively purchased. Upon consideration of said motion, the court sustained said motion, (and not acting or giving any opinion upon the second ground taken;) and said evidence was excluded from the consideration of the jury, upon the first ground stated only, and before the jury retired the plff. excepted.

The jury then rendered a verdict for the defendant, and the plaintiff, by his counsel, moved to set aside the said verdict and *and* grant a new trial, upon the ground that the court had improperly excluded the evidence, which motion the court overruled, and refused to grant a new trial.

To all which opinion of the court, in excluding evidence as aforesaid, and in refusing a new trial, the plaintiff, by his counsel, excepted as aforesaid, and excepts and prays that this his bill of exception may be signed, sealed, and enrolled, and made a part of the record herein, which is accordingly done.

[SEAL.]

And afterwards, to wit, on the twenty-sixth day of February, of the year of our Lord one thousand eight hundred and fifty-nine, an assignment of errors was filed herein, which is as follows, to wit:

Assignment of Errors.

THE UNITED STATES OF AMERICA,
Eastern District of Texas, to wit.

District Court at Galveston.

WILLIAM CHRISTY
vs.
THE ADM'OR OF WILEY W. PRIDGEON. } In Error.

And now comes the plaintiff aforesaid by his attorney, and says, there is a manifest error in the record and proceedings, and in the judgment in the court below, in this: that, 1st. The court improperly excluded documentary proof offered by plaintiff on the trial. 2. The court improperly excluded parol evidence. 3. The court improperly, and in violation of the rules of law, decided that the grant under which the plaintiff claims was illegal and void. 4th. And there are other errors, etc. All which plaintiff is ready to verify; wherefore he prays judgment, etc.

ROB. HUGERS,
For Pl'ff in Error.

And afterwards, to wit, on the fourth day of August, of the same year, a bond in error was filed herein, which is as follows, to wit:

Bond in Error.

Know all men by these presents, that we, William Christy and Joseph E. Love, are held and firmly bound unto H. M. D. Pridgeon, administrator of Wiley W. Pridgeon, in the full and just sum of two hundred and fifty dollars, to be paid unto the said H. M. D. Pridgeon, administrator as aforesaid, his certain attorney, executor, administrator, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this fourth day of August, one thousand eight hundred and fifty-nine.

Whereas lately, at a term of the district court of the United States for the eastern district of Texas, at Galveston, in a suit depending in said court between William Christy, plaintiff, and H. M. D. Pridgeon, administrator of Wiley W. Pridgeon, defendant, a judgment was rendered in favor of the said defendant against the said William Christy, and the said William Christy having obtained a writ of error, and filed a copy thereof in the clerk's office of the said court, to reverse the judgment in the aforesaid suit, and a citation directed to the said H. M. D. Pridgeon, adm'r as aforesaid, citing and admonishing him to be and appear at a Supreme Court, to be holden at Washington on the first Monday of December next:

Now, the condition of the above obligation is such, that if the said William Christy shall prosecute his writ of error to effect, and answer all damages and costs if he fails to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

WM. CHRISTY, by his Att'y, [SEAL.]
Rob't Hughes,
JO. EVE LOVE. [SEAL.]

Signed, sealed, and delivered in presence of—

JAMES LOVE, *Clerk.*

Approved.

JOHN C. WATROUS.

And on the same day and year, a writ of error was issued herein, in the words and figures following, to wit:

Writ of Error.

THE UNITED STATES OF AMERICA, *ss.*

The President of the United States of America to the Hon. the Judge of the District Court of the United States for the Eastern district of Texas:

[s. s.]

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is before you in the said court, between William Christy, as plaintiff, and H. M. D. Paidgeon, administrator of Wiley W. Pridgeon, deceased, as defendant, a manifest error hath happened, to the great damage of the said William Christy, as by his complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom of the United States, should be done.

Witness the Honorable Roger B. Tany, Chief Justice of said Supreme Court, this fourth day of August, A. D. one thousand eight hundred and fifty-nine.

JAMES LOVE,
Clerk of the District Court of the United States for the Eastern District of Texas.

And on the same day and year a citation in error issued herein, which is as follows, to wit:

Citation in Error.

THE UNITED STATES OF AMERICA, *ss.*

The President of the United States of America to H. M. D. Pridgeon, adm'r of Wiley W. Pridgeon, dec'd, greeting:

You are hereby cited and admonished to be and appear at a Su-

preme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error, a copy whereof is filed in the clerk's office of the district court of the United States for the eastern district of Texas, wherein William Christy is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Hon. John C. Watrous, judge of the district court of the United States for the eastern district of Texas, at Galveston, this fourth day of August, A. D. one thousand eight hundred and fifty-nine.

JOHN C. WATROUS.

Upon which is an acknowledgment, as follows:

Acknowledgment.

I acknowledge due service of the within citation.

W. R. BALLINGER,
Att'y for Deft. Pridgeon, Adm'r.

THE UNITED STATES OF AMERICA,
Eastern District of Texas, ss.

I, James Love, clerk of the district court of the United States, for the eastern district of Texas, at Galveston, certify that the foregoing eighty-four pages contain a true and perfect transcript of the record and all the proceedings had in the cause of William Christy against H. M. D. Pridgeon, adm'r of Wiley W. Pridgeon, deceased, numbered one hundred and eighty-six (186) on the law docket of said court.

In testimony whereof, I hereunto set my hand and affix the seal of said court, at the city of Galveston, this fifth day of
[SEAL.] August, A. D. 1859, and 84th year of the independence of the United States of America.

JAMES LOVE, *Clerk.*

Writ of Error.

[SEAL.] THE UNITED STATES OF AMERICA, *ss.*

The President of the United States of America to the Hon. the Judge of the District Court of the United States for the Eastern district of Texas:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is before you in the said district court, between William Christy, as plaintiff, and H. M. D. Pridgeon, administrator of Wiley W. Pridgeon, deceased, as defendant, a manifest error hath happened, to the great damage of the

said William Christy, as by his complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right, and according to the laws and custom of the United States, should be done.

Witness the Honorable Roger B. Taney, Chief Justice of said Supreme Court, this fourth day of August, A. D. one thousand eight hundred and fifty-nine.

JAMES LOVE,
Clerk of the District Court of the United States, Eastern Dist. of Texas.

Allowed by .

Citation.

THE UNITED STATES OF AMERICA, *ss.*

The President of the United States of America to H. M. D. Pridgeon, adm'r of Wiley W. Pridgeon, deceased, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error, a copy whereof is filed in the clerk's office of the district court of the United States for the eastern district of Texas, wherein William Christy is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Hon. John C. Watrous, judge of the district court of the United States for the eastern district of Texas, at Galveston, this fourth day of August, A. D. one thousand eight hundred and fifty-nine.

JOHN C. WATROUS.

I acknowledge due service of the within citation.
August 5th, 1859.

W. P. BALLINGER,
Att'y for Def't Pridgeon, Adm'r.

Filed 6th March, 1860.

1235

Supreme Court of the United States.

DECEMBER TERM, 1866.

No. 22.

CHRISTY *vs.* PRIDGEON. | From the District Court of the United States for the Eastern District of Texas.

BRIEF FOR PLAINTIFF IN ERROR.

This case is one of singular irregularity, according to our notions of practice. It is an action of trespass, to try title to lands in Texas, brought by the plaintiff (Christy) in the district court, in 1849. The record seems regular down to printed page 11. It consists of the ordinary process, bringing defendant into court, declaration setting out title and possession by plaintiff, and unlawful entry and ouster. The defendant pleads two general issues and nine special pleas, to none of which is there a similiter or replication; as, under the Texas Code, issue is not formally joined. Then, on page 11, is a judgment by default in favor of plaintiff, and a writ of possession and execution for costs awarded. This was on the 9th of July, 1851. There is next an entry on the 3d of August, 1853, in which it is recited that—"In the cases known as the Christy cases, in which William Christy is plaintiff, and A. Aiken and other citizens of Harrison county are defendants, *judgments having been rendered in favor of defendants*, we, the counsel for plaintiff and defendants, agree that the plaintiff may select four of said cases in which to prosecute writs of error, and that the decision of the Supreme Court of the United States upon the issues heard and determined in the four cases shall govern and decide the same issues in the other cases in which writs of error are not prosecuted by the plaintiff, in the same manner as if the writs of error were prosecuted in them also." And, thereupon, on page 12, there follows an order, on motion of plaintiff's attorney, that this

cause be *reinstated* on the docket. Thereupon the court resumes the consideration of the case, and the *demurrer* taken *ore tenus*, as we suppose, (as it is not found on the record,) to *seven* of the *eleven* pleas was sustained, and the cause was put to the jury on the first, second, fifth, and sixth pleas.

1. The first plea is a general denial of all the allegations of the petition.

2. The second is a plea of *not guilty*.

5. The fifth plea alleges that if any such title as is claimed by the plaintiff was made, it was made on the 22d September, 1835, by Radford Berry, Alcalde of Nacogdoches, who had then no authority to make such grant.

6. The sixth plea alleges that the plaintiff claims the land sued for under a pretended grant from the State of Coahuila and Texas, made to Miguel Arciniega as a Mexican and purchaser, but by fraud and combination between William G. Logan, who was not a Mexican, and the said Arciniega, the grant was in fact made for the benefit of the said Logan, who appropriated the same to his own use and benefit.

The defendant does not set up *bona fide* possession or claim title in himself; nor does he disclaim. He appears on the record a mere trespasser. Under this state of pleading, if the judgment for defendant in this cause can be at all sustained against a previous judgment for the plaintiff, in the same record, remaining in full force—for or against which we have nothing to urge—we contend—

1*st*.—That the judgment should be reversed without regard to the question whether the title shown by plaintiff is valid.

The defendant claims no title—not even possession. By his first and second pleas he denies the trespass; but by the Texas Code the trespass need not be *proved* by plaintiff, but is presumed until disproved or disclaimed. (Sec. 6, act Feb. 5th, 1840, Hartley's Digest, p. 969.) This seems intended to place the case in the same condition as ejectment, under the consent rule at common law. *The statutory presumption of trespass includes the presumption of a prior possession trespassed upon.* The prior possession of plaintiff is shown, moreover, by the testimonio of title from the Alcalde of Nacogdoches to Arciniega, by which he was placed in "formal possession, effective and personal," and by the subsequent con-

veyances from Arciniega to Hodge, and from Hodge to Christy, read in evidence on the trial. (Record, p. 34 to 41.) The recital as to possession is prima facie evidence of the fact recited. (Whitmore vs. Napier, 4th Serj. and R., 290.)

A mere intruder, entering on a person actually seized, cannot, when sued, require him to prove title. Prior possession is enough to sustain an action against a trespasser without color of title. There is nothing in the form of the action of trespass in Texas which renders this settled principle of the common law inapplicable to this case. (Christy vs. Scott, 14 Howard, 292; 6 Texas, 497; 10 Texas, 139, 462.)

Hence, even if the sale to Arciniega were invalid, yet the statutory presumption of possession, and the recital in the testimonio of the delivery of personal possession, entitled plaintiff to a recovery, and therefore the court erred in withdrawing plaintiff's evidence from the consideration of the jury. (Record, p. 42.)

2*d Point.*—Plaintiff's title is on its face regular and valid. There is no evidence *admissible under the pleadings* impugning it. The court *therefore* erred in withdrawing it from the consideration of the jury.

Defendant introduced no evidence, except an agreement of counsel, in which it was stipulated, among other things, that it should be admitted that the land in controversy lay within 20 leagues of the boundary of the United States; and that Hodge, when he bought of Arciniega, and Christy, when he bought of Hodge, were, and continued to be, citizens of Louisiana, and never were citizens of Texas or Mexico, or domiciled therein. This agreement was read in evidence without objection. (Record, p. 42.)

Now, the foregoing statements of fact were not admissible as evidence under the pleadings. But no objection having been made to them when offered, nor motion made to exclude them, we do not claim that the fact of their having been admitted in evidence is ground for reversal. But the proof must be in accordance with the pleading—the judgment with the pleadings and proof—*secundum allegata et probata*—and the like logic must pervade all the orders and rulings of the court in a cause; for if the *judgment* be effected by erroneous interlocutory ruling *it* will

be erroneous, and should be reversed. Such is the case here—the final judgment rests on this item of evidence, inadmissible under the pleadings. In the pleadings, proofs, and judgment, *as a whole*, there is manifest error.

That the statements of fact above recited from the agreement were not properly in evidence is apparent from an inspection of the pleas in the light of the Texas Code. The defendant, in those of his pleas which are not demurred to, sets up: 1st. A general denial. 2d. Not guilty. 5th. Want of power in the Alcalde to make the grant. 6th. That the concession was procured by fraud. Under the Texas Code, each material fact relied on must be specially stated in the pleadings. To this general rule the plea of *not guilty* in an action of "trespass to try title," (act Feb. 2d., 1844, Sec. 5., Hartley's Dig., p. 971,) is the sole exception, under which plea defendant may introduce any evidence whatsoever constituting a defence; the plaintiff having also the right, without replication, to introduce evidence in avoidance. (Punderson vs. Love, 2d Texas, 60.) But where defendant does not plead "not guilty," but pleads specially the facts constituting his defence, and the plaintiff does not reply, plaintiff cannot prove matter in avoidance. Therefore, where defendant pleads "not guilty," and also special defences, he will be confined to proof of matters of which he has given notice in his special pleas, and cannot prove other affirmative defences under the plea of "not guilty." (Rivers vs. Foote, 11 Texas, 670–1.)

Hence, by pleas 5 and 6, defendant excluded his right to prove the above recited admissions in the agreement of counsel, under the plea of "not guilty"—and there is no other plea in the record, not over-ruled under which they would be admissible.

Now, leaving out of consideration the statements of fact above recited from the agreement, there is no evidence impugning the title shown by plaintiff. On its face that title is regular and valid, and it was duly admitted in evidence. (Record, pp. 16, 36, 39, 41.) The consent of the federal executive need not appear on the face of the grant. (Hatch vs. Dunn, 11 Texas, 715.) Therefore, as the presumption is in favor of the grant, and as there is no admissible evidence impugning it, the court erred in withdrawing plaintiff's evidence from the consideration of the jury. (Record, p. 42.)

3d Point.—If the assent of the supreme executive of Mexico were necessary to the location of a concession in sale to a Mexican in the border leagues, this sale having been made in due form, the assent will be presumed in the absence of any evidence indicating that it was not given.

The grant is regular in form, (11 Texas, 715,) and is proved by the testimonio, which is evidence as good as the original record. (Herndon vs. Cassiano, 7 Texas, 322.)

The Alcalde was empowered to order the survey and extend possession and title. (Repub. vs. Thorn, 3 Texas, 500; Hancock vs. McKinney, 7 Texas, 384; 20 Howard, 271.)

The Secretary of State was the proper officer to certify the decree of concession. (Spencer vs. Lapsley, 20 Howard, 271.)

The commissioner, or alcalde, was required, by the instructions of the governor, not to extend possession to any "*colonist*" within the border leagues, unless the person interested presented him an order showing the consent of the national government. (Laws Coahuila and Texas, p. 71.)

Neither the petition nor the concession shows whether the land to be selected would be within the border leagues; and, therefore, if the approval had then been regarded as necessary in cases of sales to Mexicans, it is not probable it would have been applied for until the land was selected, and, if given, would therefore not be shown by the petition or concession, but by some subsequent paper. The Texas Reports show no case of any kind, so far as we can discover, where the grant recited the previous assent of the national executive. It was evidently not customary to recite in the grant that such assent was given, and there is no law or regulation requiring it. So that the fact that such assent is not recited in the title papers presented in evidence raises no presumption that it was not given. (Hatch vs. Dunn, 11 Texas, 715.) See Larkin Case. 18 Howard pp 262 21 Texas 106 March vs Brin.

The title, on its face, being valid and complete—its *genuineness* unquestioned—it comes within the principle declared by this court in the Fuentes case, (22d Howard, 459,) that "the public acts of public officers, importing to be exercised by public authority, shall not be presumed to be usurped, but that a legitimate authority had been previously given, or subsequently ratified;" and in Delassus' case, (9th Peters, 117, 133,) that the concession, being regular in form and made by the proper officer,

is prima facie evidence that it was within the power of the officer to make it, and that he who alleges that an officer intrusted with an important duty has violated it, must show it.

4th Point.—The grant is not invalid because within the twenty frontier leagues.

The petition for concession is dated March 31, 1831, and the concession of the Governor of the State of Coahuila and Texas, April 6, 1831. (Record, p. 26.) Neither the petition nor the concession designates the land. The petition, dated at Austin, asks for eleven leagues of land "in those vacant of this department," and the decree of concession concedes the quantity asked "in the vacant lands of the state in the place designated, or in that more convenient." (Record, p. 26.) The concession was expressly asked and made by way of *sale*, in conformity to the 24th article of the law of colonization of 24th March, 1825. (1 White's New Recop., 433.) Though the concession in sale was under the 24th article, the terms granted were those of the 22d article of that law. This however, "is no objection to the title." (Hancock vs. McKinney, 7 Texas R., 384.)

The petition to the Alcalde of Nacogdoches for survey, possession, and title is dated Sept. 9, 1835; the order for survey on the 10th; the survey on the 18th, and the adjudication and testimonio of possession and title on the 25th of September, 1835.

The grant, therefore, was completed before the declaration of Texan independence, and while Texas was part of the State of Coahuila and Texas.

The "National Colonization Law" of Mexico, of 18th August, 1824, (White's Recop., 1,601,) was in force from the inception to the completion of the title. It gave to the states the disposition of all the public lands, except such as might be thereafter "taken by the national government for the defence and security of the nation," and required them to form colonization laws or regulations for their respective states, and to "conform in all things to the constitutional act, general constitution, and the regulations established in this law." The chief object of the law was to encourage the immigration of foreigners, and their establishment in colonies with liberal bounties of lands. Article 4 pro-

vides that "there cannot be colonized any lands comprehended within twenty leagues of the limits of any foreign nation, nor within ten leagues of the coasts, without the previous approbation of the general supreme executive power." Article 9 provides that "a preference shall be given to Mexican citizens in the distribution of lands," &c. It was expressly decided in the case of Arguello vs. The United States, 18th Howard, 546, and reaffirmed in the case of Cruz Cervantes vs. The U. S., 18 How., 555, that article 4 of that law did not restrict the distribution by the states to Mexican citizens of public lands within the littoral and the frontier leagues. As there is no other provision of the constitution or laws of Mexico requiring the assent of the national executive to the disposition of vacant lands in Coahuila and Texas, it was therefore settled by those cases that the state *had* the power, without the assent of the supreme executive, to make the grant in question.

But at this point we are met with an array of Texas decisions, declaring that the colonization law of Mexico prohibited the disposition of lands within the border leagues without the assent of the national executive; and by the case of League vs. Egery, and Foote vs. Egery, (24 Howard, 264, 267,) acquiescing in the Texas decisions.

All the matters necessary to a consideration of the question do not seem to have been presented to this court in the cases last named, and certainly were not considered in their opinion when pronounced: and therefore, with the indulgence of the court, we will present briefly the omitted points which seem to us decisive of the case.

The first of the Texas decisions was at the December term, 1848—one year before plaintiff brought this suit. He was the purchaser of the land from the State of Coahuila and Texas, in 1835, and had received complete legal title. Neither Mexico, nor the State of Coahuila and Texas, nor the republic, nor the State of Texas, ever questioned his title by proceeding for forfeiture, or by a conveyance to a third person, or otherwise. The *custom* of the states and territories of Mexico, while the national colonization law of 1824 was in force, to sell to Mexicans lands in the border leagues, without the assent of the national executive, which is referred to in the Arguello case, and shown in the Texas and California Reports, and in the colonization law of

Tamaulipas, (Paschal's Annot. Digest, 769, p. 229)—undisputed as it was by Mexico—shows conclusively that the law was never interpreted by the national, state, or territorial authorities to impose the condition of national assent on such sales to Mexican citizens. This court, in the Arguello and Cervantes cases, in opinions from which there was no dissent, declared that this interpretation of the law by the national, state, and territorial authorities was right; and it is evident from the opinions in the Egery cases in 24 Howard, that the court still believes such to be the true interpretation. It appears, too, from the case of Wilcox vs. Chambers, cited in defendant's brief, that the Supreme Court of Texas *now* believes, with this court, that that interpretation is right.

I therefore assume that such is the true interpretation of this law.

Hence, from 1835 to 1849, when this erroneous interpretation was first declared by any judicial tribunal, plaintiff had a valid legal title by executed contract of purchase.

This court, in the Egery cases in 24 Howard, take the decisions of the Texas courts as *a rule of property in that state*. The court say, "we do not enquire whether a more suitable rule might not have been adopted, nor whether the arguments which led to its adoption were forcible or just. We receive the decisions * * * * * * as having a binding force almost equivalent to positive law." But we respectfully submit that unless those Texas decisions have a binding force, *much more than* equivalent to positive law, they cannot control this case. When the first of these erroneous decisions was made, Texas was a state of this Union, bound by the Constitution, and could not, even by a law solemnly enacted, impair the validity of this contract, much less by a decision of its courts, or a series of decisions, which are only "*almost* equivalent to positive law." They must be equivalent or superior to the Constitution of the United States, or they cannot annul the title of the plaintiff, or "impair the validity" of his contract. The logical conclusion is inevitable. If the plaintiff had a valid title before the earliest of these decisions, he has it still unimpaired by them. Decisions settling a rule of property cannot give or take away property except in the very cases involved in them. They may, and of right ought to have, a persuasive influence on other courts deciding cases which originated in the past, but cannot control them any more than a statute law can control titles acquired in the past.

But these decisions are held binding that titles may not be disturbed. Such may have been the effect in the Egery cases, but in this case its effect would be to *disturb*, not to *quiet*, title. Plaintiff sets up title—defendant defends as a naked trespasser. The adoption of these decisions as a rule of property controlling this case would be the destruction of a title good and complete in 1835—good from that year down to the time when the Texas decisions rose to the eminence of a rule of property.

"The sound and true rule is that if the contract when made was valid by the laws of the state as then expounded by all departments of the government and administered in its courts of justice, its validity and obligation cannot be impaired by any subsequent legislation or decision of its courts altering the construction of the law." (O. L. and T. Co. vs. Debolt, 16 Howard, 432.)

Even if the constitutional objection were removed, it seems to us not sound policy to give this effect to the Texas decisions. In 1855, nearly contemporaneous with the earliest of these decisions, this court in the Arguello case settled the construction of the 4th section of the Mexican colonization law in a thorough and most ably reasoned opinion. That decision, re-affirmed in the Cervantes case, has stood for eleven years as an exposition of the settled law of such titles in all those states and territories which were acquired from Mexico.

It is doubtless still the received construction in those states and territories. Now, because the Texas courts refused to adopt that construction, and pertinaciously adhered to their own, now acknowledged to be wrong, will this court, by adopting the construction of the Texas courts, reverse its decision in the Arguello case, and destroy the titles resting on it? This would be to reverse the rank established in our system for the decisions of the federal and state courts. And yet if the interpretation in the Arguello case is to be adhered to in deciding on titles in the states and territories acquired from Mexico, it cannot be abandoned in titles in Texas—for if a grant within the border leagues in California be not impaired by want of assent of the Mexican government, a like grant in Texas cannot be, without conceding to the Texas courts the power of establishing, by a train of decisions, a rule of property which destroys the obligation of contracts.

The colonization law of Texas and Coahuila of 24th March, 1825, under the 24th article of which the concession to Arciniega was decreed, contains no requirement of approbation of the national executive in disposal of land in the border leagues, except to persons forming or joining "colonies" or "settlements," to join which foreigners were by the law invited. It were idle to take up the time of the court in showing this by a critical discussion of that law, because it, as well as all other colonization laws of the state, were repealed by the 29th article of the law of 26th March, 1834, *before the concession to Arciniega was located.* (Laws Coahuila, 1 Texas, p. 251.)

By this last law the system of colonization was done away, *colonization* contracts forbidden, but those theretofore made directed to be executed in accordance with former laws; the *instructions* under the repealed laws continued in force for the execution of outstanding contracts; and provision made for the sale of all vacant lands in the state at public auction, without regard to the colonization law of Mexico. Under this law sales were made to foreigners by the State of Coahuila and Texas within the coast and frontier leagues, and the validity of those sales affirmed. And in this, and in other modes of disposition of public lands under the act of 1834, the State of Coahuila and Texas assumed and exercised the right of disposing of those lands without regard to the limitations of the Mexican law of 1824, which exercise of right the Texas courts have sustained.

Chambers vs. Fisk, 22 Texas, 505.

Simpson vs. McLemore, 8 Texas, 448.

Blount vs. Webster, 16 Texas, 618.

At the date of the repeal of this last colonization law the concession in sale to Arciniega was not located. There is no express saving of the rights of *purchasers* whose titles were unperfected at the date of the repealing law; but the instructions to commissioners were continued in force for carrying out *colonization* contracts, (Art. 30, Laws Coahuila and Texas, 251,) under which instructions contracts of *sale*, as well as those of colonization, had theretofore been carried out: so that the means of executing the executive decree of concession remained as before the repeal of the colonization law. In these executive instructions the only limitation on the power of the commissioner or alcalde to give title within the border leagues is in Art. 5, as follows: "He shall not give possession to any *colonist* settled or intending to

settle within twenty frontier leagues, &c., unless the person interested shall present him an order from this government wherein the approbation thereof of the national government shall be manifested." (Laws Coahuila and Texas, p. 71.) "*Colonists*, so-called, are those introduced by a contractor." (9 Texas R., 465.) The conditional prohibitions in the instructions, therefore, applied to *colonists* only, and not to Mexican *purchasers*.

Did the right of purchase remain after the repeal of the law under which the concession was decreed? We think it hardly necessary to argue that it did. It was a vested right—evidenced by a decree of the state—and there is in the repealing law no express or implied revocation of it. A distinguished writer on Spanish law, which was the common law of the State of Coahuila and Texas, (Gortario vs. Cantu, 7 Texas, 46,) says of the legislation of Spain: "The law is not obligatory but from its promulgation; it cannot apply itself to times past, but alone to those in future; and for that, it is said, the law cannot have a retroactive effect. This is a principle conservative of the fortune, the honor, and the life of the citizen."

Escriches, Derecho Patrio, 8–9.

As we have before said, neither the petition for sale nor the decree of concession specially described the lands to be located. If the law of Texas and Coahuila did in fact require the assent of the national executive, when that law was repealed, and all the border leagues thrown into market with the mass of the public lands, it can hardly be claimed that the restrictive formula still attached to the concession. If we admit the construction by the Texas court of the 7th article of the colonization law of Texas and Coahuila of 1825 to be correct, it merely requires the governor to "take care that no disposition be made of land in the border leagues without the assent of the supreme executive;" and surely when that legisla tive direction was revoked, and provision made for sales of all vacant lands, to foreigners and Mexicans alike, in direct opposition to the cautious policy of former laws, there could be no reason why the executive or his subordinates should not allow the location in conformity with the express language of the decree of concession—"on the vacant lands of the state in the place designated," (to wit, in "this department,") "or in that more convenient."

THOMAS EWING, JR.
For Plaintiff in Error.

Supreme Court of the United States.

DECEMBER TERM, 1866.

No. 22.

WILLIAM CHRISTY, Plaintiff in Error, *vs.* H. M. D. PRIDGEON, Administrator of W. W. Pridgeon, deceased, Defendant in Error.	From the District Court of the United States for the Eastern District of Texas.

BRIEF FOR DEFENDANT IN ERROR.

STATEMENT OF THE CASE.

The Plaintiff, Christy, brought his action of Trespass, to try title, against the Defendant, Pridgeon, for Eleven Leagues of land situated in Harrison county, Texas.

It was admitted, "that the land in controversy, or that embraced within the boundary of the grant under which plaintiff claims, was, at the date of said grant, and remained, within the twenty frontier leagues bordering on the United States line of the North; and the plaintiff will offer no evidence on the trial, other than the grant under which he claims, conducing to show the assent or approbation of the National Executive of the Republic of Mexico, to the making of said grant." (Record, pp. 41, 42.)

The Court, on this ground, ruled that the Plaintiff's grant was illegal and void, and excluded it from the Jury. Thereupon, the Jury found for the Defendant. (Record, p. 42.) And the alleged error in this decision, is the only question before this Court.

POINTS AND AUTHORITIES.

The invalidity and nullity of the Mexican grants within the eleven coast, and twenty border, leagues of Texas,

unless the assent of the Supreme Executive of Mexico was affirmatively shown to such grants, was repeatedly and firmly settled by the Supreme Court of Texas, in a series of cases:

Edwards *vs.* Davis, 3 Texas, 321.
Republic *vs.* Thorn, 3 Texas, 499.
5 Texas, 410; 9 Texas, 556; 10 Texas, 316.

These decisions had, for years, been acquiesced in by the bar and the people, and constituted a rule of property for a very large portion of the State.

The counsel for the Plaintiff in this action, undertook a series of litigation to overthrow these decisions; but they have been reiterated and affirmed both in the Supreme Court of Texas, and in this Court, until it is not possible to conceive a more fixed and settled course of decisions and rule of property, than the nullity of this class of titles:

Smith *vs.* Power, 14 Texas, 146.
Smith *vs.* Power, 23 Texas, 29.
League *vs.* Egery, 24 Howard, 264.
Foote *vs.* Egery, 24 Howard, 267.

In a later case, decided in 1863, by the Supreme Court of Texas, Mr. Justice Ball expressed his individual opinion, that the decision was originally erroneous, but declared that it has been too long and too firmly settled to be now shaken.

Wilcox *vs.* Chambers, MSS.

It cannot be doubted but that this Court will, by its decision, now, give repose and finality to this subject.

"*Interest reipublicæ ut sit finis litium.*"

GREEN ADAMS,
ROBERT LEECH,
Attorneys for Defendant in Error.